

MEDIUM-TERM CAPACITY (MTC) I CONTRACT

Between

[●]

– and –

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

DATED as of the [●] day of [●], 20●.

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TABLE OF CONTENTS

Page

ARTICLE 1 DEFINITIONS	1
1.1 Definitions	1
1.2 Exhibits	135
1.3 Headings and Table of Contents	145
1.4 Gender and Number	146
1.5 Currency	146
1.6 IESO Market Rules and Statutes	156
1.7 Invalidity, Unenforceability, or Inapplicability of Indices and Other Provisions	157
1.8 Entire Agreement	168
1.9 Waiver, Amendment	168
1.10 Governing Law	168
1.11 Preparation of Agreement	169
ARTICLE 2 OPERATION	169
2.1 Operational Covenants	169
2.2 Pre-Term Capacity Verification	1720
2.3 Metering and Dispatch Capabilities	1820
2.4 Insurance Covenants	219
2.5 Compliance with Laws and Regulations and Facility Registration	202
2.6 Environmental Attributes	202
2.7 Future Capacity Related Products	202
2.8 Other Commitment of Contract Capacity	203
ARTICLE 3 PERFORMANCE OBLIGATIONS	203
3.1 Must-Offer Obligation	203
3.2 Facility Capacity Factor Obligation	213
3.3 Conversion of an FCF Facility to a Must-Offer Facility	244
ARTICLE 4 CALCULATION OF MONTHLY PAYMENT	224
4.1 Calculation of Monthly Payment	224
4.2 Supplier's Responsibility for Taxes	224
4.3 Buyer's Responsibility for Taxes	224
4.4 Non-Residency	224
ARTICLE 5 STATEMENTS AND PAYMENTS	235
5.1 Meter and Other Data	235
5.2 Statements	235
5.3 Payment	235
5.4 Interest	236
5.5 Payment Account Information	246
5.6 Adjustment to Statement	246
5.7 Disputed Statement	257
5.8 Statements and Payment Records	257
ARTICLE 6 CREDIT AND SECURITY REQUIREMENTS	257



TABLE OF CONTENTS

(continued)

	Page
6.1 Performance Security.....	<u>257</u>
6.2 Composition of Security.....	<u>268</u>
6.3 Interest on Performance Security.....	<u>279</u>
ARTICLE 7 REPRESENTATIONS	<u>279</u>
7.1 Representations of the Supplier.....	<u>279</u>
7.2 Representations of the Buyer.....	<u>2931</u>
ARTICLE 8 CONFIDENTIALITY AND FIPPA	<u>302</u>
8.1 Confidential Information.....	<u>302</u>
8.2 Notice Preceding Compelled Disclosure.....	<u>313</u>
8.3 Return of Information.....	<u>314</u>
8.4 Injunctive and Other Relief.....	<u>324</u>
8.5 FIPPA Records and Compliance.....	<u>324</u>
ARTICLE 9 TERM	<u>324</u>
9.1 Term.....	<u>324</u>
ARTICLE 10 TERMINATION AND DEFAULT	<u>325</u>
10.1 Events of Default by the Supplier.....	<u>325</u>
10.2 Remedies of the Buyer.....	<u>357</u>
10.3 Events of Default by the Buyer.....	<u>358</u>
10.4 Termination by the Supplier.....	<u>379</u>
10.5 Remedies for Termination Non-Exclusive.....	<u>379</u>
ARTICLE 11 FORCE MAJEURE	<u>3740</u>
11.1 Effect of Invoking Force Majeure.....	<u>3740</u>
11.2 Exclusions.....	<u>3941</u>
11.3 Definition of Force Majeure.....	<u>3942</u>
ARTICLE 12 LENDER'S RIGHTS	<u>414</u>
12.1 Lender Security.....	<u>414</u>
12.2 Rights and Obligations of Secured Lenders.....	<u>425</u>
12.3 Cooperation.....	<u>458</u>
ARTICLE 13 <u>DISCRIMINATORY ACTION</u>	<u>48</u>
<u>13.1 Discriminatory Action</u>	<u>48</u>
<u>13.2 Consequences of Discriminatory Action</u>	<u>49</u>
<u>13.3 Notice of Discriminatory Action</u>	<u>50</u>
<u>13.4 Right of the Buyer to Remedy or Cause to be Remedied a Discriminatory Action</u>	<u>52</u>
<u>ARTICLE 14 LIABILITY AND INDEMNIFICATION</u>	<u>453</u>
<u>134.1 Exclusion of Consequential Damages</u>	<u>453</u>
<u>134.2 Liquidated Damages</u>	<u>46</u>
<u>153</u>	
<u>14.3 Buyer Indemnification</u>	<u>46</u>

TABLE OF CONTENTS

(continued)

	Page
153	
<u>14.4</u> Defence of Claims.....	<u>546</u>
ARTICLE <u>145</u> CONTRACT OPERATION AND ADMINISTRATION.....	<u>547</u>
<u>145.1</u> Company Representative.....	<u>547</u>
<u>145.2</u> Record Retention; Audit Rights and Obligations.....	<u>4755</u>
<u>145.3</u> Reports to the Buyer.....	<u>4855</u>
<u>145.4</u> Inspection of Facility.....	<u>4956</u>
<u>145.5</u> Inspection Not Waiver.....	<u>4957</u>
<u>145.6</u> Capacity Check Tests for Must-Offer Facility.....	<u>507</u>
<u>145.7</u> Notices.....	<u>5260</u>
ARTICLE <u>156</u> MISCELLANEOUS.....	<u>54</u>
<u>615</u>	
<u>16.1</u> Informal Dispute Resolution.....	<u>54</u>
615	
<u>16.2</u> Arbitration.....	<u>5462</u>
156.3 Business Relationship.....	5562
156.4 Binding Agreement.....	5562
156.5 Assignment.....	5563
156.6 Survival.....	563
156.7 Counterparts.....	564
156.8 Additional Rights of Set-Off.....	564
156.9 Rights and Remedies Not Limited to Contract.....	564
156.10 Time of Essence.....	564
156.11 Further Assurances.....	564

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MEDIUM-TERM CAPACITY (MTC) I CONTRACT

This Medium-Term Capacity (MTC) I Contract is dated as of the [●] day of [●] 20●, (the “**Contract Date**”) between [●] (the “**Supplier**”), and the Independent Electricity System Operator (the “**Buyer**”). The Supplier and the Buyer are each referred to herein as a “**Party**” and collectively as the “**Parties**”.

~~[NTD: Recitals to be updated.]~~

WHEREAS on January 27, 2022, the Minister of Energy issued a directive to the Buyer pursuant to subsection 25.32 of the Electricity Act (the “**Ministerial Directive**”) to undertake a procurement initiative to procure capacity on an unforced capacity (UCAP) basis from existing electricity generation or storage facilities;

AND WHEREAS the Buyer, issued a request for proposals dated ● January 31, 2022, as amended, to solicit capacity services from existing facilities in Ontario (the “**Medium-Term MT I RFP**”);

AND WHEREAS the Supplier submitted a proposal to provide Capacity Products from the Facility under the ~~Medium-Term~~ MT I RFP;

AND WHEREAS the Supplier’s proposal was selected by the Buyer and accordingly the Supplier and the Buyer wish to execute this Agreement in order to formalize the medium-term contractual arrangements for the Supplier to supply Capacity Products from the Facility, directly or indirectly, to the IESO-Administered Markets during the Term on the terms and conditions set out herein;

NOW THEREFORE, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

In addition to the terms defined elsewhere herein, the following capitalized terms shall have the meanings stated below when used in this Agreement:

“**Additional Term**” has the meaning ascribed to it in Exhibit C.

“**Adjusted Monthly Contract Capacity**” has the meaning ascribed to it in Exhibit E-A or Exhibit E-B, as applicable.

“**Affiliate**” means any Person that: (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.

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“**Agreement**” means this ~~Medium Term Capacity~~ MTC I Contract as it may be amended, restated or replaced from time to time.

“**Ancillary Services**” has the meaning ascribed to it in the IESO Market Rules.

“**Annual Operating Plan**” has the meaning ascribed to it in Section 145.3(b)(~~iii~~).

~~“**Annual Planned Maintenance Month**” has the meaning given to it in Exhibit E-A or Exhibit E-B, as applicable.~~

“**Arbitration Panel**” has the meaning ascribed to it in Exhibit K.

“**Arm’s Length**” means, with respect to two or more Persons, that such Persons are not related to each other within the meaning of subsections 251(2), (3), (3.1), (3.2), (4), (5) and (6) of the *Income Tax Act* (Canada) or any substantially equivalent successor provisions or that such Persons, as a matter of fact, deal with each other at a particular time at arm’s length.

“**Assignee**” has the meaning ascribed to it in Section 156.5(c).

“**Associated Relationship**” means the relationship between a meter at a Delivery Point and a Market Participant (where such Market Participant is not the Metered Market Participant), as established by certain processes in the Meter Data Distribution or MDD.

“**Availability Non-Performance Charge**” or “**ANPC**” has the meaning ascribed to it in Exhibit J.

“**Average Test Capacity**” has the meaning ascribed to it in Section 145.6(e).

“**Bank Act**” means the *Bank Act* (Canada), as amended from time to time.

“**Business Day**” means a day, other than a Saturday or Sunday or statutory holiday in the Province of Ontario or any other day on which banking institutions in Toronto, Ontario are not open for the transaction of business.

“**Buyer**” has the meaning given to it in the first paragraph of this Agreement and includes such Person’s successors and permitted assigns.

“**Buyer Event of Default**” has the meaning ascribed to it in Section 10.3.

“**Buyer Statement**” has the meaning ascribed to it in Section 12.2(g).

“**Buyer’s Website**” means the website of the Buyer located at uniform resource locator (URL) <https://www.ieso.ca/> or such other URL, or other electronic or non-electronic format, as the Buyer may provide to the Supplier from time to time.

“**Capacity Check Test**” has the meaning ascribed to it in Section 145.6(a).

“**Capacity Check Test Notice**” has the meaning ascribed to it in Section 15.6(a).

“**Capacity Confirmation**” has the meaning ascribed to it in Section 145.6(c).

“**Capacity Products**” means any products related to the rated, continuous load-carrying capability of a generating facility to generate and deliver Electricity at a given time.

“**Capacity Reduction Factor**” or “**CRF**” shall be an amount equivalent to 1.0 until, and to the extent, determined otherwise pursuant to Sections 145.6(f) and 145.6(g).

“**Claim**” means a claim or cause of action in contract, in tort, under any Laws and Regulations or otherwise.

“**Commercially Reasonable Efforts**” means efforts which are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by this Agreement and which do not require the performing Party to expend any funds or assume liabilities, other than expenditures and liabilities which are reasonable in nature and amount in the context of the transactions contemplated by this Agreement.

“**Company Representative**” has the meaning ascribed to it in Section 145.1.

“**Confidential Information**” means:

- (a) all information that has been identified as confidential and which is furnished or disclosed by the Disclosing Party and its Representatives to the Receiving Party and its Representatives in connection with this Agreement, whether before or after its execution, including all new information derived at any time from any such confidential information, but excluding: (i) publicly-available information, unless made public by the Receiving Party or its Representatives in a manner not permitted by this Agreement; (ii) information already known to the Receiving Party prior to being furnished by the Disclosing Party; and (iii) information disclosed to the Receiving Party from a source other than the Disclosing Party or its Representative, if such source is not subject to any agreement with the Disclosing Party prohibiting such disclosure to the Receiving Party; and (iv) information that is independently developed by the Receiving Party; and
- (b) Mutually Confidential Information.

“**Confidentiality Undertaking**” has the meaning ascribed to it in Section 8.1(c).

“**Connection Point**” means, (i) where the Facility is connected to the IESO-Controlled Grid, the electrical point or points of connection, as defined in the IESO Market Rules, between the Facility and the IESO-Controlled Grid; and (ii) where the Facility is connected to a Local Distribution System, the embedded connection point(s), as defined in the IESO Market Rules, between the Facility and the Local Distribution System, in either case as specified in Exhibit A. For greater certainty, the Connection Point is defined by reference to electrical connection points.

“**Contract Capacity**” means the value in MW set out in Exhibit B for the corresponding month as the “Monthly Contract Capacity”, subject to adjustment as expressly provided in the Agreement.

“**Contract Date**” has the meaning given to that term in the first paragraph of this Agreement.

“**Contract Year**” means a twelve (12) month period during the Term which begins on the Term Commencement Date or an anniversary date thereof.

“**Control**” means, with respect to any Person at any time:

- (i) holding, whether directly or indirectly, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or
- (ii) the exercise of *de facto* control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise.

“**CPI**” or “**Consumer Price Index**” means the consumer price index for “All Items” published or established by Statistics Canada (or its successors) for any relevant calendar month in relation to the Province of Ontario.

“**Credit Rating**” means, (i) with respect to the Supplier (A) its long-term senior unsecured debt rating (not supported by third party credit enhancement) or (B) the lower of its issuer or corporate credit rating, as applicable, in either case being the lower provided by S&P, Moody’s or DBRS Morningstar or any other established and reputable debt rating agency, agreed to by the Parties from time to time, each acting reasonably, and (ii) with respect to any other Person, its long-term senior unsecured debt rating or its deposit rating as provided by Moody’s, S&P, DBRS Morningstar, or, if such Person is a financial institution, Fitch IBCA, or DBRS Morningstar or any other established and reputable rating agency, as agreed to by the Parties, acting reasonably, from time to time.

“**Curtailment**” means any Dispatch Instruction requiring the Facility to Deliver Electricity in a quantity (which may be nil) less than the quantity that would otherwise have been generated by the Facility as a result of available renewable energy resource, as such quantity and availability may be determined by the System Operator, in accordance with the IESO Market Rules. **Curtail** and **Curtailed** shall have corresponding meanings.

“**DACP**” means the “Day Ahead Commitment Process” as set out in Market Manual 9 of the IESO Market Rules.

“**Day-Ahead Market**” or “**DAM**” means, as of the Contract Date, the DACP, as such program may be amended or replaced from time to time, including with a forward market, established under the IESO Market Rules or otherwise, for Electricity or for Electricity and Related Products for each hour of a given day, that clears the day before based upon submitted hourly bids to buy and offers to sell, and shall include, for purposes of this Agreement, such other mechanisms or amendments to the IESO Market Rules to enhance pre-dispatch scheduling and unit commitment of generators on a day-ahead basis, at which time “**Day-Ahead Market**” or “**DAM**” shall have

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the meaning ascribed to such terms in the IESO Market Rules. Until such time as the DACP is replaced with a forward energy market under the IESO Market Rules as contemplated in this definition, “**Day-Ahead Market**” or “**DAM**” shall ~~include~~ mean the DACP plus the real-time energy market under the IESO Market Rules corresponding with any scheduled or committed generation ~~scheduled~~ established under the DACP.

“**DBRS Morningstar**” means DBRS Limited or its successor.

“**Delivered**” means, in relation to Electricity, delivered to the Delivery Point net of any Station Service Loads in accordance with the Metering Plan.

“**Delivery Points**” means (i) uniquely identified reference points determined in accordance with the IESO Market Rules and used for settlement purposes in the real-time markets and (ii) the point(s) at which revenue-quality metering records the net Electricity delivered to an End-User, as set out in Exhibit A.

“**Disclosing Party**”, with respect to Confidential Information, is the Party and/or its Representatives providing or disclosing such Confidential Information and may be the Buyer or the Supplier, as applicable; provided, however, that where such Confidential Information is Mutually Confidential Information, both the Buyer and the Supplier shall be deemed to be the Disclosing Party.

“**Discriminatory Action**” has the meaning ascribed to it in Section 13.1.

“**Discriminatory Action Compensation**” has the meaning ascribed to it in Section 13.2.

“**Discriminatory Action Compensation Amount**” has the meaning ascribed to it in Section 13.3(e)(i).

“**Discriminatory Action Compensation Notice**” has the meaning ascribed to it in Section 13.3(e)(i).

“**Dispatch Instruction**” means a “dispatch instruction” by the System Operator as that term is defined in the IESO Market Rules.

“**Distribution System Code**” means the code approved by the OEB, as amended from time to time, which, among other things, establishes the obligations of an LDC with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards of distribution systems.

“**Dollars**”, or “**\$**” means Canadian dollars and cents.

“**Duration Capability**” means the number of hours during which the Must-Offer Facility has the ability, under normal operating conditions, to generate a sustained amount of Electricity which may be either: (i) less than four (4) consecutive hours; (ii) more than four (4) consecutive hours but less than or equal to eight (8) consecutive hours; or (iii) more than eight (8) consecutive hours, as indicated in Exhibit B.

“**Electricity**” means electric energy.

“**Electricity Act**” means the *Electricity Act, 1998* (Ontario), as amended or replaced from time to time.

“**Emission Reduction Credits**” means the credits associated with the amount of emissions to the air avoided by reducing the emissions below the lower of actual historical emissions or regulatory limits, including “emission reduction credits” as may be defined in any regulation as may be promulgated under the *Environmental Protection Act* (Ontario).

“**End-User**” means a Person who owns or operates an End-User Load.

“**End-User Load**” means a load facility which utilizes electricity supplied through a direct connection to the Transmission System, the Local Distribution System or the Facility.

“**Environmental Attributes**” means the interests or rights arising out of attributes or characteristics relating to the environmental impacts associated with a generating facility or the output of a generating facility, and includes:

- (a) rights to any fungible or non-fungible attributes, whether arising from the generating facility itself, from the interaction of the generating facility with the IESO-Controlled Grid, the Local Distribution System or an End-User or because of applicable legislation or voluntary programs established by Governmental Authorities;
- (b) any and all rights relating to the nature of the energy source as may be defined and awarded through applicable legislation or voluntary programs. Specific environmental attributes include ownership rights to Emission Reduction Credits or entitlements resulting from interaction of the generating facility with the IESO-Controlled Grid, the Local Distribution System or an End-User or as specified by applicable legislation or voluntary programs, and the right to qualify and register these with competent authorities; and
- (c) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing.

“**EST**” means the Eastern Standard Time applicable in the IESO Administered Markets, as set forth in the IESO Market Rules.

“**Event of Default**” means a Supplier Event of Default or a Buyer Event of Default.

“**Excluded Forgone Electricity**” is Electricity that would have been Delivered by the Facility but was not so Delivered solely due to Grid Incapability.

“**Facility**” means the facility described in Exhibit A which is either a Must-Offer Facility or an FCF Facility as indicated in Exhibit A.

“**Facility Capacity Factor Obligation**” has the meaning ascribed to it in Section 3.2(a).

“**Facility Performance Obligation**” means (i) in respect of a Must-Offer Facility, the Must-Offer Obligation, or (ii) in respect of an FCF Facility, the Facility Capacity Factor Obligation.

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“FCF_m” has the meaning ascribed to it in Exhibit ~~J~~F-B.

“FCF Facility” means a facility which is not a Must-Offer Facility and is subject to the Facility Capacity Factor Obligations as indicated in Exhibit A.

“FCF Facility Availability Non-Performance Charge” or “FCFANC” has the meaning ascribed to it in Section 3.2(b).

“FCP_{AB}” has the meaning ascribed to it in Exhibit J.

“Fixed Capacity Payment” or “~~FCP_a~~FCP_{dy}” means the amount expressed in \$/MW-Business Day ~~set forth in Exhibit B~~, calculated for any given Settlement Month “m” in Contract Year “y”, as set out in Exhibit J as being applicable for such Settlement Month.

“Final Capacity Check Test” has the meaning ascribed to it in Section 145.6(g).

“FIPPA” means the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended or supplemented from time to time.

“FIPPA Records” has the meaning ascribed to it in Section 8.5.

“Fitch IBCA” means Fitch IBCA, Duff & Phelps, a division of Fitch Inc., or its successors.

“Force Majeure” has the meaning ascribed to it in Section 11.3.

“Force Majeure Capacity Reduction Factor” or “FMCRF” has the meaning ascribed to it in Exhibit J.

“Force Majeure Outage Capacity” or “FMOC” has the meaning ascribed to it in Exhibit J.

“Force Majeure Outage Hour” or “FMOH” has the meaning ascribed to it in Exhibit J.

“Forgone Energy” means, during any relevant period, a notional amount of Electricity (in MWh), that would have been Delivered by the Facility as a result of there being available renewable energy resource as such notional amount and such available renewable energy resource is determined by the “forecasting entity” (as that term is used in the IESO Market Rules) or otherwise by the System Operator, excluding during, and to the extent of, an Outage of the Facility (but only excluded in this determination to the extent where such notional amount of Electricity was not already excluded from the determination of the amount of Electricity that would have been delivered), and that was not Delivered by the Facility as a result of Curtailment, and shall exclude Excluded Forgone Electricity, and provided that, for each discrete time interval, Forgone Energy shall not exceed the Nameplate Capacity multiplied by the applicable time interval.

“Further Capacity Check Test” has the meaning ascribed to it in Section 145.6(e).

“Future Capacity Related Products” means all Capacity Products that relate to the Contract Capacity and that were not capable of being traded by the Supplier in the IESO-Administered Markets or other markets on or before the Contract Date.

“Good Engineering and Operating Practices” means any of the practices, methods and activities adopted by a significant portion of the North American electric utility industry as good practices applicable to the design, building, and operation of generation facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgement by a prudent generator in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods, or acts generally accepted in the North American electric utility industry. Without limiting the generality of the foregoing and in respect of the operation of the Facility, Good Engineering and Operating Practices include taking Commercially Reasonable Efforts to ensure that:

- (a) adequate materials, resources and supplies, including fuel, are available to meet the Facility’s needs under reasonable conditions and reasonably anticipated abnormal conditions;
- (b) sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly, efficiently and taking into account manufacturers’ guidelines and specifications and are capable of responding to abnormal conditions;
- (c) preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation and taking into account manufacturers’ recommendations and are performed by knowledgeable, trained and experienced personnel utilising proper equipment, tools and procedures; and
- (d) appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and abnormal conditions.

“Government of Ontario” means Her Majesty the Queen in right of Ontario.

“Governmental Authority” means any federal, provincial, or municipal government, parliament or legislature, or any regulatory authority, agency, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other law, regulation or rule-making entity, having jurisdiction in the relevant circumstances, including the IESO, the OEB, the Electrical Safety Authority, and any Person acting under the authority of any Governmental Authority, but excluding the IESO.

“Grid Incapability” means that no Electricity from the Facility can physically be received at or transmitted or distributed from any Connection Point.

“HST” means the harmonized sales tax exigible pursuant to the *Excise Tax Act* (Canada), as amended from time to time.

“IESO-Administered Markets” has the meaning ascribed to it by the IESO Market Rules.

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“**IESO-Controlled Grid**” has the meaning ascribed to it by the IESO Market Rules.

“**IESO Market Rules**” means the rules governing the IESO-Controlled Grid and establishing and governing the IESO-Administered Markets, together with all market manuals, policies, and guidelines issued by the IESO, all as amended or replaced from time to time.

“**including**” means “including, without limitation”.

“**Indemnifiable Loss**” has the meaning ascribed to it in Section 134.3.

“**Indemnitees**” has the meaning ascribed to it in Section 134.3.

“**Independent Engineer**” means an engineer that is:

- (a) a Professional Engineer duly qualified and licensed to practice engineering in the Province of Ontario; and
- (b) employed by an independent engineering firm which holds a certificate of authorization issued by Professional Engineers Ontario that is not affiliated with or directly or indirectly controlled by the Supplier and that does not have a vested interest in the Facility.

“**Index Factor**” or “**IF**” has the meaning ascribed to such term in Exhibit J.

“**Insolvency Legislation**” means the *Bankruptcy and Insolvency Act* (Canada), the *Winding Up and Restructuring Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) and analogous legislation in effect in the provinces and territories of Canada and the bankruptcy, insolvency, creditor protection or similar laws of any other jurisdiction (regardless of the jurisdiction of such application or competence of such law), as they may be amended from time to time.

“**Interest Rate**” means the annual rate of interest established by the Royal Bank of Canada or its successor, from time to time, as the interest rate it will charge for demand loans in Dollars to its commercial customers in Canada and which it designates as its “**prime rate**” based on a year of 365 or 366 days, as applicable. Any change in such prime rate shall be effective automatically on the date such change is announced by the Royal Bank of Canada.

“**ITA**” means the *Income Tax Act* (Canada), as amended from time to time and all regulations promulgated thereunder from time to time.

“**kV**” means kilovolt.

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour.

“**Laws and Regulations**” means:

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- (a) applicable Canadian federal, provincial or municipal laws, orders-in-council, by-laws, codes, rules, policies, regulations and statutes;
- (b) applicable orders, decisions, codes, judgments, injunctions, decrees, awards and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction;
- (c) applicable rulings and conditions of any licence, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority;
- (d) any requirements under or prescribed by applicable common law; and
- (e) the IESO Market Rules, as well as any manuals or interpretation bulletins issued by the IESO from time to time that are binding on the Supplier.

“**Letter of Credit**” means one or more irrevocable and unconditional standby letters of credit issued by a financial institution listed in either Schedule I or II of the *Bank Act* (Canada) or such other financial institution having a minimum Credit Rating of (i) A- with S&P, (ii) A3 with Moody’s, (iii) A (low) with DBRS Morningstar, or (iv) A- with Fitch IBCA, in substantially the form attached as Exhibit C or in a form acceptable to the Buyer, acting reasonably, and otherwise conforming to the provisions of Section 6.2.

“**Local Distribution Company**” or “**LDC**” means a Person licensed by the OEB as a “Distributor” in connection with a Local Distribution System.

“**Local Distribution System**” means a system for conveying Electricity at voltages of 50 kV or less and includes any structures, equipment or other things used for that purpose.

“**Longstop Date**” has the meaning ascribed to it in Section 2.2(c).

“**Market Participant**” has the meaning ascribed to it by the IESO Market Rules.

“**Material Adverse Effect**” means any change (or changes taken together) in, or effect on, the affected Party that materially and adversely affects the ability of such Party to perform its obligations hereunder.

~~“**Medium-Term RFP**” has the meaning ascribed to it in the recitals to this Agreement.~~

“**Metered Market Participant**” has the meaning ascribed to it in the IESO Market Rules.

“**Metering Plan**” means a document that is provided by the Supplier to be approved by the Buyer and that (a) verifies that the revenue-quality interval meters used to measure Electricity conform with Measurement Canada Regulations, (b) provides technical specifications for meters, instrument transformers and relevant instruments for main and backup metering, and (c) provides all required information, and equipment specifications needed to permit the Buyer to remotely access, verify, estimate and edit for calculation purposes, and/or total revenue meter readings in order to accurately determine the generator output at the Delivery Point net of any Station Service Loads, and which is updated promptly, and, in any event, within ten (10) Business Days after any change to the metering installation occurs.

“**Ministerial ~~Direction~~ Directive**” has the meaning ascribed to it in the recitals to this Agreement.

“**Monthly Average Offered Quantity**” or “**MAOQ**” means the quantity (in MW) determined by summing the MW quantity of all hourly price-quantity pairs (or future equivalent) offered by the Must-Offer Facility into the Day-Ahead Market for dispatch during Qualifying Hours in the Settlement Month, divided by the number of Qualifying Hours in such Settlement Month.

“**Monthly Capacity Payment**” or “**MCP**” has the meaning ascribed to it in Exhibit F-A or Exhibit F-B, as applicable.

“**Monthly Contract Capacity**” or “**MCC**” means the Contract Capacity for each Season which shall be designated for each calendar month during such Season separately as set out in Exhibit B.

“**Monthly Facility Capacity Factor**” means the value, expressed as a percentage, calculated by dividing the Monthly Qualified Delivered Electricity by the Reference ICAP Monthly Delivery.

“**Monthly Minimum Capacity Factor**” or “**MMCF**” means, for any Settlement Month, the value, expressed as a percentage, calculated in accordance with Exhibit E-B.

“**Monthly Minimum Offer Quantity**” or “**MMOQ**” means, for any Settlement Month, the value, expressed in MW, calculated in accordance with Exhibit E-A.

“**Monthly Payment**” has the meaning ascribed to it in Section 4.1.

“**Monthly Qualified Delivered Electricity**” means Electricity Delivered during Qualifying Hours in any Settlement Month, plus any Forgone Energy that would have been delivered during Qualifying Hours but for any Curtailment.

“**Moody’s**” means Moody’s Investors Service, Inc. or its successor.

“**MT I RFP**” has the meaning ascribed to it in the recitals to this Agreement.

“**Must-Offer Facility**” is a Facility that is required to meet the Must-Offer Obligation as indicated in Exhibit A and is either (i) a “registered facility” under the IESO Market Rules that is not “variable generation,” or a “self-scheduling generation facility” (each as may be defined in the IESO Market Rules), or (ii) a Facility associated with a “resource” that is not a “variable generation,” or a “self-scheduling generation resource” (each as may be defined in the IESO Market Rules).

“**Must-Offer Facility Availability Non-Performance Charge**” or “**MOFANC**” has the meaning ascribed to it in Section 3.1(b).

“**Must-Offer Obligation**” has the meaning ascribed to it in Section 3.1(a).

“**Mutually Confidential Information**” means Confidential Information which has been identified by the Parties as Confidential Information of both the ~~Sponsor~~ Buyer and the Supplier.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**Nameplate Capacity**” means the rated, continuous load-carrying capability net of parasitic or Station Service Loads, expressed in MW in Exhibit B, of the Facility to generate and deliver Electricity at a given time, and which includes the Contract Capacity.

“**New Agreement**” means a new agreement substantially in the form of this Agreement, which is to be entered into with a Secured Lender who is at Arm’s Length with the Supplier or a Person identified by such Secured Lender following termination of this Agreement, as set out in Section 12.2(g).

“**Non-Performance Factor**” or “**NPF**” means the monthly non-performance factor set out in Exhibit F-A or Exhibit F-B, as applicable.

“**Notice of Discriminatory Action**” has the meaning ascribed to it in Section 13.3(a).

“**Notice of Dispute**” has the meaning ascribed to it in Section 13.3(b).

“**OEB**” means the Ontario Energy Board, or its successor.

“**Other Suppliers**” means all of the other suppliers that have entered into a contract with the Buyer as contemplated by the Ministerial ~~Direction~~Directive.

“**Outage**” means the removal of equipment from service, unavailability for connection of equipment or temporary de-rating, restriction of use or reduction in performance of equipment for any reason, including to permit the performance of inspections, tests, repairs or maintenance on equipment, which results in a partial or total interruption in the ability of the Facility to make the Contract Capacity available and deliver the Electricity from the Facility.

“**Outage Hours**” means the duration, expressed in hours, of any Outages.

“**Party**” means each of the Supplier and the Buyer, and the Supplier and the Buyer are collectively referred to as the “**Parties**”.

“**Payment Date**” has the meaning ascribed to it in Section 5.3.

“**Performance Security**” has the meaning ascribed to it in Section 6.1(a).

“**Person**” means a natural person, firm, trust, partnership, limited partnership, company or corporation (with or without share capital), joint venture, sole proprietorship, Governmental Authority or other entity of any kind.

“**Planned Outage**” means an Outage which is planned and intentional, and has been disclosed to the Buyer pursuant to Section 145.3.

“**Planned Outage Hour**” or “**POH**” has the meaning ascribed to it in Exhibit E-A or Exhibit E-B, as applicable.

“**Planned Outage Capacity Reduction Factor**” or “**POCRF**” has the meaning ascribed to it in Exhibit E-A or Exhibit E-B, as applicable.

“**Preliminary Notice**” has the meaning ascribed to it in Section 13.3(a).

“**Prevailing Party**” has the meaning ascribed to it in Section 13.3(e)(ii).

“**Pre-Term Capacity Verification**” has the meaning ascribed to it in Section 2.2(a).

“**PTC Verification Period**” has the meaning given to it in Section 2.2(a).

“**Qualifying Hours**” means all hours from 07:00 to 23:00 EST on Business Days.

“**Receiving Party**”, with respect to Confidential Information, is the Party receiving Confidential Information and may be the Buyer or the Supplier, as applicable.

“**Reference ICAP Monthly Delivery**” means the Reference Seasonal ICAP multiplied by the number of Qualifying Hours in any Settlement Month.

“**Reference Seasonal ICAP**” or “**RSICAP**” means the value in MW indicated in Exhibit B separately for the Summer and the Winter, representing greatest portion of the Nameplate Capacity that is not contractually committed to, or otherwise the subject of any agreement with, a party other than the Buyer under this Agreement during the Term, that the Facility is able to generate, on average, for at least one (1) continuous hour during the applicable Season, factoring in ambient temperature conditions, as reported at the Environment Canada weather station that is physically nearest to the Facility, not exceeding +30~~5~~ degrees Celsius in the Summer and not below -20 degrees Celsius in the Winter and operating in accordance with Good Engineering and Operating Practices.

“**Related Products**” means all Capacity Products, Ancillary Services, transmission rights and any other products or services that may be associated with the Facility from time to time (but excluding Environmental Attributes produced by the Facility) that may be traded in the IESO-Administered Markets or other markets, or otherwise sold, and which shall be deemed to include products and services for which no market may exist, such as capacity reserves, but which shall be deemed to exclude steam, water, and compressed air produced by the Facility.

“**Replacement Provision(s)**” has the meaning ascribed to it in Section 1.7(b).

“**Representatives**” means a Party’s directors, officers, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents and those of its Affiliates, and the agents and advisors of such Persons. While the Buyer is the IESO, this definition shall also include the Government of Ontario, the IESO, and their respective directors, officers, employees, auditors, consultants (including economic and legal advisors), contractors and agents.

“**S&P**” means the Standard and Poors Rating Group (a division of McGraw-Hill Inc.) or its successors.

“**Season**” means Summer or Winter, as applicable, and “**Seasons**” means collectively Summer and Winter seasons.

“**Secured Lender**” means a lender under a Secured Lender’s Security Agreement.

“**Secured Lender’s Security Agreement**” means an agreement or instrument, including a deed of trust or similar instrument securing loans, notes, bonds or debentures or other indebtedness, liabilities or obligations, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Supplier’s Interest granted by the Supplier that is security for any indebtedness, liability or obligation of the Supplier, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

“**Senior Conference**” has the meaning ascribed to it in Section 156.1.

“**Settlement Month**” has the meaning ascribed to it in Section 5.2, provided that if the first or last Settlement Month in the Term is less than a full calendar month, for the purposes of Exhibit J such month shall be equal to the number of days of the Term in such calendar month.

“**SF_m**” has the meaning ascribed to it in Exhibit J.

“**Sole Annual Planned Maintenance Month**” has the meaning ascribed to it in Section 15.3(b).

“**Split Annual Planned Maintenance Month**” has the meaning ascribed to it in Section 15.3(b).

“**Statement**” has the meaning ascribed to it in Section 5.2.

“**Station Service Loads**” means energy consumed to power the on-site maintenance and operation of generation facilities but excludes energy consumed in association with activities which could be ceased or moved to other locations without impeding the normal and safe operation of the Facility.

“**Summer**” means the season commencing on May 1 and ending on October 31 for any given calendar year.

“**Supplier**” has the meaning given to it in the first paragraph of this Agreement and includes such Person’s successors and permitted assigns.

“**Supplier Event of Default**” has the meaning ascribed to it in Section 10.1.

“**Supplier Non-acceptance Notice**” has the meaning ascribed to it in Section 13.3(e).

“**Supplier’s Interest**” means the right, title and interest of the Supplier in or to the Facility and this Agreement, or any benefit or advantage of any of the foregoing.

“**System Operator**” means the Independent Electricity System Operator of Ontario established under Part II of the *Electricity Act*, and its successors, acting pursuant to its authority to make, administer and enforce the IESO Market Rules.

“**Taxes**” means all *ad valorem*, property, occupation, severance, production, transmission, utility, gross production, gross receipts, sales, use, excise and other taxes, governmental charges,

licenses, permits and assessments, other than (i) HST and (ii) taxes based on profits, net income or net worth.

“**Term**” has the meaning ascribed to it in Section 9.1(b).

“**Term Commencement Date**” has the meaning ascribed to it in Section 9.1(b).

“**Termination Date**” means the date on which this Agreement terminates as a result of an early termination of this Agreement in accordance with this Agreement.

“**Transmission System**” means a system for conveying Electricity at voltages of more than 50 kV and includes any structures, equipment or other things used for that purpose.

“**Transmission System Code**” means the “Transmission System Code” approved by the OEB and in effect from time to time, which, among other things, sets the standards for a Transmitter’s existing Transmission System and for expanding the Transmitter’s transmission facilities in order to connect new customers to it or accommodate increase in capacity or load of existing customers.

“**Transmitter**” means a Person licensed as a “transmitter” by the OEB in connection with a Transmission System.

“**Winter**” means the season commencing on November 1 of a calendar year and ending on April 30 of the subsequent calendar year.

1.2 Exhibits

The following Exhibits are attached to and form part of this Agreement:

Exhibit A	Facility Description
Exhibit B	Contract Capacity, Fixed Capacity Payment, and Other Stated Variables
Exhibit C	Form of Irrevocable Standby Letter of Credit
Exhibit D	Form of Company Representative Notice
Exhibit E-A	Calculation of Minimum Offer Quantity
Exhibit E-B	Calculation of Facility Capacity Factor and Minimum FCF
Exhibit F-A	Must-Offer Facility Availability Non-Performance Charges
Exhibit F-B	FCF Facility Availability Non-Performance Charges
Exhibit G	Form of Acknowledgement of Secured Lender’s Rights
Exhibit H	Form of Force Majeure Notice

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Exhibit J	Calculation of Monthly Payment
Exhibit K	Arbitration Procedures Applicable to Section 1.6 and 1.7
Exhibit L	Form of Annual Operating Plan

Exhibits **C, D, H, I, and L** in the forms attached to this Agreement, reflect the corresponding forms appearing on the Buyer's Website as at the date of this Agreement. ~~**[NTD: to be confirmed.]**~~ However, the Supplier acknowledges and agrees that the Buyer may, at any time and from time to time after the date of this Agreement, acting reasonably, without notice to the Supplier, amend or replace each such form of certificate, notice or report, and post such amended or replacement form on the Buyer's Website, and thereafter such amended or replaced form as it appears on the Buyer's Website shall replace and shall be used by the Supplier or the Buyer, as the case may be, in the stead of the then current form. Accordingly, it is the responsibility of the Supplier to ensure that the latest draft of the relevant form, as posted on the Buyer's Website, is used.

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated, and shall be paid, in Dollars.

1.6 IESO Market Rules and Statutes

- (a) Unless otherwise expressly stipulated, any reference in this Agreement to the IESO Market Rules or to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the IESO Market Rules, statute, regulation, rule or provision as amended, re-enacted or replaced from time to time. In the event of any conflict or inconsistency with the IESO Market Rules and the terms of this Agreement, the IESO Market Rules shall govern to the extent of such conflict or inconsistency.

- (b) To the extent that the board of directors of the IESO has given final approval to an amendment to the IESO Market Rules following the Contract Date, unless such amendment is stayed by the OEB, and as a result of such amendment, the Supplier is or would be unable to comply with the Facility Performance Obligations

without incurring material costs, where the Supplier would not reasonably incur such material costs if the Facility were operating in the IESO Administered Markets without this Agreement being in place, then:

- (i) the Supplier shall notify the Buyer promptly and, in any event, within ten (10) Business Days upon becoming aware of the consequences of such change;
- (ii) the Parties and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall engage in good faith negotiations to amend the affected Facility Performance Obligations in this Agreement and the respective agreements of those Other Suppliers on the basis that such amendments shall alter or reduce the applicable Facility Performance Obligations only to the extent necessary to eliminate the need to incur such material costs as set out above, where such altered or reduced Facility Performance Obligations are as close as possible to the Facility Performance Obligations prior to such alteration or reduction; and
- (iii) if the Parties agree that amendments to this Agreement are required pursuant to Section 1.6(b)(ii) but fail to reach agreement on such amendments within sixty (60) days after the change in the IESO Market Rules became effective, the matter shall be determined by mandatory and binding arbitration, from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement (if any) made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.6(c)(iii).

For greater certainty, the amendments contemplated in this Section 1.6(b) shall not involve an increase in the Fixed Capacity Payment, unless otherwise agreed by the Parties.

- (c) The terms of this Agreement shall be amended either:
 - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.6(b)(iii);
 - (ii) by the agreement of the Parties made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.6(b)(iii), where the Supplier failed to participate in such arbitration,

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with such agreement or amendment, as the case may be, having effect from and after the date that the change in the IESO Market Rules became effective.

This Section 1.6 shall not apply to the circumstances addressed in Section 1.7.

1.7 Invalidity, Unenforceability, or Inapplicability of Indices and Other Provisions

In the event that either the Buyer or the Supplier, acting reasonably, considers that any provision of this Agreement is invalid, inapplicable, or unenforceable, ceases to be published, or if the basis therefor is changed materially, then:

- (a) if a provision is considered to be invalid, inapplicable or unenforceable, then the Party considering such provision to be invalid, inapplicable or unenforceable may propose, by notice in writing to the other Party, a replacement provision and the Buyer and the Supplier and, at the Buyer's discretion, those Other Suppliers who are required by the Buyer to participate, shall then engage in good faith negotiations to replace such provision with a valid, enforceable, and applicable provision, the economic effect of which substantially reflects that of the invalid, unenforceable, or inapplicable provision which it replaces;
- (b) if the Parties agree that amendments to this Agreement are required pursuant to this Section 1.7 and the negotiations set out in Sections 1.7(a) are not successful, then if the Parties are unable to agree on all such issues and any amendments required to this Agreement (the "**Replacement Provision(s)**") within thirty (30) days after either the giving of the notice under Section 1.7(a), then the Replacement Provision(s) shall be determined by mandatory and binding arbitration from which there shall be no appeal, with such arbitration(s) to be conducted in accordance with the procedures set out in Exhibit K. However, if the Supplier fails to participate in such arbitration, the Supplier acknowledges that it waives its right to participate in such arbitration, which shall nevertheless proceed, and the Supplier shall be bound by the award of the Arbitration Panel and the subsequent amendments to this Agreement made by the Buyer to implement such award of the Arbitration Panel set out in Section 1.7(c)(iii); and
- (c) the terms of this Agreement shall be amended either:
 - (i) by the agreement of the Parties, where no award of an Arbitration Panel has been made pursuant to Section 1.7(b);
 - (ii) by the agreement of the Parties made pursuant to and in implementation of an award of the Arbitration Panel made pursuant to Section 1.7(b); or
 - (iii) by an amendment prepared by the Buyer made pursuant to and to implement an award of the Arbitration Panel made pursuant to Section 1.7(b), where the Supplier failed to participate in such arbitration,

with such agreement or amendment, as applicable, having effect as of the date of the invalidity, inapplicability or unenforceability, as the case may be.

~~This Section 1.7 shall not apply to the circumstances addressed in Section 2.6.~~

1.8 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, conditions, or representations (including any that may be implied by statute) and there are no agreements in connection with the subject matter of this Agreement except as specifically set forth or referred to in this Agreement. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made by a Party to this Agreement, or its directors, officers, employees or agents, to the other Party to this Agreement or its directors, officers, employees or agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party (or Parties) to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply unless otherwise expressly provided.

1.10 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.11 Preparation of Agreement

Notwithstanding the fact that this Agreement was drafted by the Buyer's legal and other professional advisors, the Parties acknowledge and agree that any doubt or ambiguity in the meaning, application or enforceability of any term or provision of this Agreement shall not be construed or interpreted against the Buyer or in favour of the Supplier when interpreting such term or provision, by virtue of such fact.

ARTICLE 2 OPERATION

2.1 Operational Covenants

- (a) From the Contract Date until the expiry of the Term, the Supplier shall own, operate and maintain the Facility in accordance with Good Engineering and Operating Practices and meeting all applicable requirements of the IESO Market Rules, the Transmission System Code, the Distribution System Code and any connection agreements with the IESO, a Transmitter, or an LDC.
- (b) From and after the beginning of the hour ending 01:00 hours (EST) of the Term Commencement Date, the Supplier agrees to operate the Facility in accordance

with the Facility Performance Obligations, and the Monthly Payments shall begin to accrue and be payable in accordance with Section 4.1 and Article 5. For certainty, the Parties acknowledge that the Buyer is not purchasing from the Supplier, nor is the Supplier selling to the Buyer, any Electricity or Related Products, provided however, nothing in this sentence restricts the Supplier's right to sell Electricity and Related Products attributable to the Contract Capacity into the IESO-Administered Markets or other markets.

- (c) The Supplier agrees to assume all risk, liability and obligation and to indemnify, defend and hold harmless the Indemnitees in respect of all actions, causes of action, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, obligations and liabilities arising out of a discharge of any contaminant into the natural environment, at or related to, the Facility and any fines or orders of any kind that may be levied or made in connection therewith pursuant to the *Environmental Protection Act* (Ontario), the *Ontario Water Resources Act* (Ontario), the *Dangerous Goods Transportation Act* (Ontario) or other similar legislation, whether federal or provincial and all as amended from time to time, except to the degree that such discharge shall have been due to the negligence or wilful misconduct of the Indemnitees.
- (d) A Facility which is also a load facility under the IESO Market Rules or a consumer under the Distribution System Code, as applicable, shall be solely responsible for all charges in relation to Electricity consumed by it in order to operate the Facility in accordance with this Agreement.

2.2 Pre-Term Capacity Verification

- (a) The Supplier shall, no later than ninety (90) days and no earlier than one hundred and eighty days (180) days prior to the Term Commencement Date (“**PTC Verification Period**”), deliver to the Buyer revenue-quality interval meter data in accordance with and as a part of the Metering Plan (provided in .xls format for both the primary and alternate or secondary meter) from a date that is no earlier than ninety (90) days prior to the start of the PTC Verification Period, verifying the ability of the Facility to operate for at least twelve (12) consecutive five (5) minute intervals during Qualifying Hours at a level of at least one hundred percent (100%) of its applicable Reference Seasonal ICAP for the calendar month in which the operational meter data was created (such confirmation, the “**Pre-Term Capacity Verification**”). ~~[NTD: further details regarding the method of submission of meter data to be confirmed.]~~
- (b) The Buyer shall notify the Supplier in writing within twenty (20) Business Days following receipt of the documentation provided by the Supplier under the Pre-Term Capacity Verification ~~are~~, whether such documentation is acceptable to the Buyer, acting reasonably. If the Buyer determines that such documentation provided by the Supplier does not meet the requirements of the Pre-Term Capacity Verification, the Buyer shall at the time of such notification provide to the Supplier reasonable particulars in respect of the deficiencies in such documentation.

- (c) Notwithstanding anything else in this Agreement, the Supplier agrees that Monthly Payments shall not begin to accrue and be payable by the Buyer until such time as the Pre-Term Capacity Verification ~~set out in Section 2.2(a)~~ is completed and that even if the Pre-Term Capacity Verification has not been completed by the Term Commencement Date, the Term shall nevertheless expire on the date set out in Section 9.1(b) and such shortened payment period shall constitute liquidated damages and not a penalty. Additionally, if the Pre-Term Capacity Verification set out in Section 2.2(a) is not completed by the date that is three (3) calendar months after the Term Commencement Date (the “**Longstop Date**”), such failure shall constitute a Supplier Event of Default as set out in Section 10.1(k). If the Pre-Term Capacity Verification is achieved after the period specified in Section 2.2(a) but on or before the Longstop Date, then such delay shall not constitute a Supplier Event of Default and the Buyer’s sole remedy in such case shall be the shortened payment period during the Term as provided in this Section 2.2(c). Notwithstanding anything else in this Agreement, Force Majeure ~~shall not relieve~~ may apply to extend the PTC Verification Period but shall not, in any circumstances, extend the Longstop Date or impact the ~~timing of the Supplier’s obligation to complete the Pre-Term Capacity Verification in accordance with this~~ Event of Default as set out in Section ~~210.21(k)~~ 210.21(k).

2.3 Metering and Dispatch Capabilities

- (a) The Supplier covenants and agrees to provide, at its expense, individual meters and ancillary metering and monitoring equipment for the Facility as required by the IESO Market Rules and sufficient to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive ~~for~~of any loss adjustment factors. The Buyer may obtain access internally to the revenue-quality interval meter data of the Facility provided to the Buyer under the IESO Market Rules to calculate the output of Electricity from the Facility net of any Station Service Loads and inclusive ~~for~~of any loss, adjustment factors, or, if required, the Supplier shall provide the Buyer, for the purposes of this Agreement, the right to view, download and request such revenue-quality interval meter data of the Facility by establishing an Associated Relationship with the Buyer at the Delivery Point of the Facility within the Buyer’s “Meter Data Management” or “MDM” or “Meter Data Distribution” or “MDD” systems or their successors, at no cost to the Buyer.
- (b) The Buyer retains the right to audit, at any time during the Term, on reasonable notice to the Supplier and during normal business hours, the metering equipment to confirm the accuracy of the Metering Plan and the meter data of the Facility to confirm the accuracy of such data. The Supplier shall deliver a draft of the Metering Plan to the Buyer for its approval no later than one hundred and fifty days (150) days prior to the start of PTC Verification Period ~~pursuant to Section 2.2(a)~~. The Buyer agrees to review the Metering Plan submitted by the Supplier and to either approve the plan or provide the Supplier with its comments within thirty (30) Business Days after receipt. If the Buyer has not approved the Metering

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Plan, the Supplier shall revise the Metering Plan to reflect the Buyer's comments and shall resubmit it to the Buyer for approval. The Supplier will provide the Buyer with a commissioning report for all revenue meters referenced in the Metering Plan prior to any use of metered data for the purposes expressed in Section 145.6.

2.4 Insurance Covenants

- (a) The Supplier hereby agrees to put in effect and maintain, from the Contract Date to the expiry of the Term, at its own cost and expense, all the necessary and appropriate insurance that a prudent Person in the business of operating the Facility would maintain including the policies set out in this Section 2.4, "all-risk" property insurance covering property of every description insuring maximum foreseeable loss and covering business interruption on an actual loss sustained basis, equipment breakdown insurance, commercial general liability insurance, and environmental impairment liability insurance. These policies must contain a waiver of subrogation in favour of the Indemnitees.
- (b) All insurance policies to be effected and maintained as required hereunder shall:
 - (i) be placed with insurers licensed to underwrite insurance in the Province of Ontario and having an overall A.M. Best's Rating of at least A- (except in the case of automobile liability insurance where the minimum rating of the insurer shall be B+); and
 - (ii) be capable of being reviewed and altered during the term of the policy to account for any changes in Laws and Regulations which affect coverage of the risk insured.
- (c) Upon the request of the Buyer, the Supplier will provide the Buyer with a copy of each insurance policy to be furnished within ten (10) Business Days of the request being made by the Buyer.
- (d) If the Supplier is subject to the *Workplace Safety and Insurance Act* (Ontario), it shall submit a valid clearance certificate of Workplace Safety and Insurance Act coverage to the Buyer on or prior to the Contract Date. In addition, the Supplier shall, from time to time at the request of the Buyer, provide additional *Workplace Safety and Insurance Act* clearance certificates. The Supplier agrees to pay when due, and to ensure that each of its contractors and subcontractors pays when due, all amounts required to be paid by it and its contractors and subcontractors, from time to time from the Contract Date, under the *Workplace Safety and Insurance Act* (Ontario), failing which the Buyer shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the *Workplace Safety and Insurance Act* (Ontario) and unpaid by the Supplier or its contractors and subcontractors and to deduct such amount from any amount due and owing from time to time to the Supplier

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pursuant to this Agreement together with all costs incurred by the Buyer in connection therewith.

2.5 Compliance with Laws and Regulations and Facility Registration

- (a) The Buyer and the Supplier shall each comply, in all material respects, with all Laws and Regulations required to perform or comply with their respective obligations under this Agreement.
- (b) The Buyer and the Supplier shall each furnish, in a timely manner, information to Governmental Authorities and shall each obtain and maintain in good standing any licence, permit, certificate, registration, authorization, consent or approval of any Governmental Authority required to perform or comply with their respective obligations under this Agreement, including such licensing as is required by the OEB. Without limiting the generality of the foregoing, the Supplier agrees to meet all applicable Facility registration requirements as specified in the IESO Market Rules.

2.6 Environmental Attributes

The Buyer shall have no interest hereunder in any Environmental Attributes arising from the operation of the Facility or, except in respect of the Supplier's performance requirements under this Agreement, other products or services associated with the generation of Electricity or Ancillary Services by the Facility. For greater certainty, the Supplier shall, at its sole expense, be responsible for complying with any Laws and Regulations relating to Environmental Attributes, including any costs associated with obtaining, qualifying and registering Environmental Attributes for the operation of the Facility or otherwise.

2.7 Future Capacity Related Products

- (a) The Supplier will provide the Buyer with prior written notice of the development by the Supplier of any Future Capacity Related Products, from time to time.
- (b) The Supplier shall not, without the Buyer's prior written consent, which consent shall be subject to the Buyer's sole and absolute discretion, develop, register or monetize any Future Capacity Related Products during the Term.

2.8 Other Commitment of Contract Capacity

The Supplier shall ensure that the Contract Capacity and the Reference Seasonal ICAP is exclusively committed to the Buyer hereunder and that no part of the Contract Capacity or the Reference Seasonal ICAP is subject to any physical or contractual arrangement that interferes with the Supplier's ability to satisfy the Facility Performance Obligations during the Term.

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ARTICLE 3 PERFORMANCE OBLIGATIONS

3.1 Must-Offer Obligation

- (a) If the Facility is a Must-Offer Facility, in each Settlement Month other than a Sole Annual Planned Maintenance Month, the Supplier must offer Electricity output from the Facility into the Day-Ahead Market from the Facility's capacity that is not subject to an Outage, such that the Monthly Average Offered Quantity for the Settlement Month is equal to or greater than the Monthly Minimum Offer Quantity (the "**Must-Offer Obligation**").
- (b) If at the end of a Settlement Month other than a Sole Annual Planned Maintenance Month, the Facility's Monthly Average Offered Quantity is less than the Monthly Minimum Offer Quantity, a "**Must-Offer Facility Availability Non-Performance Charge**" shall be assessed in accordance with Exhibit F-A and charged to the Supplier for the applicable Settlement Month as liquidated damages and not as a penalty. Except for the Supplier Event of Default set out in Section 10.1(l), and subject to Supplier's compliance with the other requirements set out in this Agreement, the Must-Offer Facility Availability Non-Performance Charge shall be the sole and exclusive remedy for the Supplier's failure to satisfy the Must-Offer Obligation.

3.2 Facility Capacity Factor Obligation

- (a) If the Facility is an FCF Facility, in each Settlement Month other than a Sole Annual Planned Maintenance Month, the Supplier must cause the Facility to produce a minimum amount of Monthly Qualified Delivered Electricity such that the Monthly Facility Capacity Factor in such Settlement Month is equal to or greater than the Monthly Minimum Capacity Factor (the "**Facility Capacity Factor Obligation**").
- (b) If at the end of a Settlement Month other than a Sole Annual Planned Maintenance Month, an FCF Facility has failed to meet the Facility Capacity Factor Obligation, an "**FCF Facility Availability Non-Performance Charge**" shall be assessed in accordance with Exhibit F-B and charged to the Supplier for the applicable Settlement Month as liquidated damages and not as a penalty. Except for the Supplier Event of Default set out in Section 10.1(m), and subject to Supplier's compliance with the other requirements set out in this Agreement, the FCF Facility Availability Non-Performance Charge shall be the sole and exclusive remedy for the Supplier's failure to satisfy the Facility Capacity Factor Obligation.

3.3 Conversion of an FCF Facility to a Must-Offer Facility

If the Facility is an FCF Facility and is not "variable generation," or a "self-scheduling generation facility" (each as defined in the IESO Market Rules), then, the Supplier may, upon written notice to and subject to receiving the written consent of the Buyer, which consent shall

not be unreasonably withheld, conditioned, or delayed, register the Facility under the IESO Market Rules and convert from an FCF Facility to a Must-Offer Facility under this Agreement. In such circumstances this Agreement will be amended to replace Exhibit A with updated information reflecting the Facility as a Must-Offer Facility as of the start of the next Settlement Month following such conversion.

ARTICLE 4 CALCULATION OF MONTHLY PAYMENT

4.1 Calculation of Monthly Payment

The “**Monthly Payment**” shall be an amount, based on the Fixed Capacity Payment and calculated in accordance with Exhibit J. If the Monthly Payment is a positive amount, it shall be payable from the Buyer to the Supplier. If the Monthly Payment is a negative amount, the absolute value of the Monthly Payment shall be payable from the Supplier to the Buyer.

4.2 Supplier’s Responsibility for Taxes

The Supplier is liable for and shall pay, or cause to be paid, or reimburse the Buyer if the Buyer has paid, all Taxes applicable to any Monthly Payment due to the Buyer. If any HST is payable in connection with the Monthly Payment, such HST shall be paid by the Supplier. In the event that the Buyer is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Supplier hereunder, or shall be added to any sums becoming due to the Buyer hereunder.

4.3 Buyer’s Responsibility for Taxes

The Buyer is liable for and shall pay, or cause to be paid, or reimburse the Supplier if the Supplier has paid, all Taxes applicable to any Monthly Payment due to the Supplier. If any HST is payable in connection with the Monthly Payment, such HST shall be paid by the Buyer. In the event that the Supplier is required to remit such Taxes, the amount thereof shall be deducted from any sums becoming due to the Buyer hereunder, or shall be added to any sums becoming due to the Supplier hereunder.

4.4 Non-Residency

If the Supplier is or becomes a non-resident of Canada, as that term is defined in the ITA, the Supplier shall notify the Buyer forthwith of such status and shall provide the Buyer with information sufficient to permit the Buyer to comply with any withholding Tax, or other Tax obligations, to which the Buyer may be subject as a result thereof. If the Buyer incurs any withholding or other similar Taxes as a result of such non-residency, then payments under this Agreement by the Buyer shall be reduced by the amount of such withholding Taxes and the Buyer shall remit such withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Supplier in writing, providing reasonable detail of such payment so that the Supplier may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If, after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Supplier.

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ARTICLE 5 STATEMENTS AND PAYMENTS

5.1 Meter and Other Data

The Supplier agrees to provide to the Buyer access to the meters in the Metering Plan to accommodate remote interrogation of the metered data on a daily basis. The Supplier agrees to provide to the Buyer, at all times, access to any other information relating to the Facility that the Supplier has provided or received pursuant to the IESO Market Rules or that the Supplier has provided to or received from the LDC, as applicable, from time to time. The Buyer agrees to provide to the Supplier, upon the Supplier's request, any documentation with respect to the IESO-Administered Markets and any other information that the Buyer will be utilizing in preparing any Statement that is not otherwise available directly to the Supplier. Upon a Party becoming aware of any errors or omissions in any data or information provided in accordance with this Section 5.1, such Party shall notify the other Party in accordance with the IESO Market Rules, on a timely basis.

5.2 Statements

The Buyer shall prepare and deliver a settlement statement (the "**Statement**") to the Supplier, within twenty (20) Business Days after the end of each calendar month in the Term that is the subject of the Statement (the "**Settlement Month**"), setting out the basis for the Monthly Payment with respect to the Settlement Month, as well as the basis for any other payments owing under this Agreement by either Party to the other in the Settlement Month. A Statement may be delivered by the Buyer to the Supplier by facsimile or electronic means and shall include the reference number assigned to this Agreement by the Buyer and a description of the components of the Monthly Payment and other payments, as described in this Agreement, including Section 4.1 as applicable, owing to the Supplier for the Settlement Month.

5.3 Payment

The Party owing the Monthly Payment shall remit to the other Party full payment in respect of the Statement no later than the final Business Day of the month immediately after the end of the Settlement Month to which the Statement relates (the "**Payment Date**"). Any and all payments required to be made by either Party under any provision of this Agreement shall be made by electronic funds transfer (ETF) to the applicable account designated in Section 5.5, or as otherwise agreed by the Parties.

5.4 Interest

The Party owing the Monthly Payment shall pay interest on any late payment to the other Party, from the Payment Date to the date of payment, unless such late payment was through the fault of the other Party. The interest rate applicable to such late payment shall be the Interest Rate in effect on the date that the payment went into arrears, calculated daily, but shall not, under any circumstances, exceed the maximum interest rate permitted by Laws and Regulations.

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5.5 Payment Account Information

(a) Account for payments to Supplier:

Account Name:
Swift Code:
Bank Number:
Transit:
Account:

Supplier's HST Registration Number:

The Buyer acknowledges that the account information and HST registration number of the Supplier above constitutes Supplier's Confidential Information and is subject to the obligations of the Buyer as set out in Article 8.

(b) Account for payments to Buyer:

Royal Bank of Canada
Main Bay Street, Main Branch
200 Street, Main Floor
Toronto, ON M5J 2J5

Account Number:
Transit Number:

Buyer's HST Registration Number:

The Supplier acknowledges that the account information and HST registration number of the Buyer above constitutes Buyer's Confidential Information and is subject to the obligations of the Supplier as set out in Article 8.

Either Party may change its account information from time to time by written notice to the other in accordance with Section 145.7.

5.6 Adjustment to Statement

- (a) Each Statement shall be subject to adjustment for errors in arithmetic, computation, or other errors, raised by a Party during the period of one (1) year following the end of the calendar year in which such Statement was issued. If there are no complaints raised, or if any complaints raised in the time period have been resolved, such Statement shall be final and subject to no further adjustment after the expiration of such period.
- (b) Notwithstanding the foregoing, the determination by the System Operator of any information shall be final and binding on the Parties in accordance with the IESO

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Market Rules, and without limiting the generality of the foregoing, if a Statement contains an error in the data or information issued by the System Operator which the System Operator has requested be corrected, then the one (1) year limit set forth in Section 5.6(a) shall not apply to the correction of such error or the Buyer's ability to readjust the Statement.

- (c) Subject to Section 5.7, any adjustment to a Statement made pursuant to this Section 5.6 shall be made in the next subsequent Statement.

5.7 Disputed Statement

If the Supplier disputes a Statement or any portion thereof, the Party owing any amount set forth in the Statement shall, notwithstanding such dispute, pay the entire amount set forth in the Statement to the other Party. The Supplier shall provide written notice to the Buyer setting out the portions of the Statement that are in dispute with a brief explanation of the dispute. If it is subsequently determined or agreed that an adjustment to the Statement is appropriate, the Buyer will promptly prepare a revised Statement. Any overpayment or underpayment of any amount due under a Statement shall bear interest at the Interest Rate, calculated daily, from and including the time of such overpayment or underpayment to the date of the refund or payment thereof. Payment pursuant to the revised Statement shall be made on the tenth (10th) Business Day following the date on which the revised Statement is delivered to the Supplier. If a Statement dispute has not been resolved between the Parties within five (5) Business Days after receipt of written notice of such dispute by the Buyer, the dispute may be submitted by either Party to a Senior Conference pursuant to the terms of Section 156.1.

5.8 Statements and Payment Records

The Parties shall keep all books and records necessary to support the information contained in and with respect to each Statement and Monthly Payment made thereunder, in accordance with Section 145.2.

ARTICLE 6 CREDIT AND SECURITY REQUIREMENTS

6.1 Performance Security

- (a) The Parties acknowledge that the Supplier has, prior to the execution of this Agreement, provided to the Buyer security for the performance of the Supplier's obligations under this Agreement in an amount equal to ~~ten~~ ten thousand Dollars (\$10,000) per MW of the Monthly Contract Capacity during the Summer, subject to a maximum of two million Dollars (\$2,000,000) ~~†~~ and in the form described in Section 6.2 for the performance of the Supplier's obligations under this Agreement (the "**Performance Security**").
- (b) From and after the Contract Date and until the end of the Term, the Supplier shall maintain the Performance Security in the amount set out in Section 6.1(a).

- (c) In the event that the Buyer, in accordance with this Agreement, has recovered monies that were due to it using all or part of the Performance Security, the Supplier shall forthwith provide replacement security to cover an amount equal to that recovered or paid out of the Performance Security.

6.2 Composition of Security

- (a) The Performance Security shall be in the form of a Letter of Credit, for the full amount of the Performance Security.
- (b) A Letter of Credit delivered hereunder shall be subject to the following provisions:
 - (i) The Supplier shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the financial institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or other equivalent form of security satisfactory to the Buyer at least ten (10) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a financial institution issuing a Letter of Credit fails to honour the Buyer's properly documented request to draw on an outstanding Letter of Credit (other than a failure to honour as a result of a request to draw that does not conform to the requirements of such Letter of Credit), provide for the benefit of the Buyer (A) a substitute Letter of Credit that is issued by another financial institution, or (B) other security satisfactory to the Buyer in an amount equal to such outstanding Letter of Credit, in either case within five (5) Business Days after the Supplier receives notice of such refusal.
 - (ii) A Letter of Credit shall provide that the Buyer may draw upon the Letter of Credit in an amount (up to the face amount or part thereof remaining available to be drawn thereunder for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Supplier but that have not been paid to the Buyer within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A Letter of Credit shall provide that a drawing may be made on the Letter of Credit upon submission to the financial institution issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Buyer in accordance with the specific requirements of the Letter of Credit. The location where the drawing may be made must be Toronto, Ontario.
 - (iii) If the Supplier shall fail to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or establish one or more additional Letters of Credit or other equivalent form of security satisfactory to the Buyer when required hereunder, then without limiting other remedies the Buyer may have under this Agreement, the

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Buyer (i) may draw on the undrawn portion of any outstanding Letter of Credit and retain for its own account, as liquidated damages and not as a penalty, the amount equal to one (1%) percent of the face value of such outstanding Letter of Credit and/or (ii) prior to the expiry of such Letter of Credit, may draw on the entire, undrawn portion of any outstanding Letter of Credit, upon submission to the financial institution issuing such Letter of Credit of a certificate specifying the entire amount of the Letter of Credit is owing to the Buyer in accordance with the specific requirements of the Letter of Credit. Any amount then due and owing to the Buyer shall be received by the Buyer as liquidated damages and not as a penalty. If the amounts then due and owing are less than the amount drawn under such Letter of Credit, then such excess amount shall be held as Performance Security. The Supplier shall remain liable for any amounts due and owing to the Buyer and remaining unpaid after the application of the amounts so drawn by the Buyer. If the Supplier subsequently delivers a Letter of Credit or other security or other collateral permitted pursuant hereto, in each case satisfactory to the Buyer in its sole and absolute discretion as to form, substance and amount, then upon acceptance by the Buyer thereof, the Buyer shall remit to the Supplier all amounts held by the Buyer as Performance Security pursuant to this Section 6.2(b)(iii).

- (c) The costs and expenses of establishing, renewing, substituting, cancelling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Supplier.
- (d) The Buyer shall return a Letter of Credit held by the Buyer to the Supplier, if the Supplier is substituting a Letter of Credit of a greater or lesser amount pursuant to Section 6.2(b)(i), within five (5) Business Days from the Buyer's receipt of such substituted Letter of Credit.

6.3 Interest on Performance Security

Any interest earned by the Buyer on any Performance Security provided to the Buyer shall be for the account of the Buyer and the Supplier shall not have any right to such interest.

ARTICLE 7 REPRESENTATIONS

7.1 Representations of the Supplier

The Supplier represents to the Buyer as follows, and acknowledges that the Buyer is relying on such representations in entering into this Agreement:

- (a) The Supplier is a [●] [formed/incorporated] under the laws of [●], is registered or otherwise qualified to carry on business in the Province of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.

- (b) This Agreement has been duly authorized, executed, and delivered by the Supplier and is a valid and binding obligation of the Supplier enforceable in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may only be granted in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Supplier and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Supplier under:
- (i) any contract or obligation to which the Supplier is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the articles, by-laws or other constating documents, or resolutions of the directors or shareholders of the Supplier;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licence, permit, approval, consent or authorization held by the Supplier; or
 - (v) any Laws and Regulations,
- that could have a Material Adverse Effect on the Supplier.
- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against or being contemplated by the Supplier or, to the knowledge of the Supplier, threatened against the Supplier.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Supplier, threatened against the Supplier that could have a Material Adverse Effect on the Supplier.
- (f) All requirements for the Supplier to make any filing, declaration or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Supplier is not a non-resident of Canada for the purposes of the ITA, unless it has notified the System Operator of such non-resident status as per Section 4.4.

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- (h) The Supplier is in compliance with all Laws and Regulations, other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Supplier or on its obligations under this Agreement.
- (i) The Supplier is the owner of the Facility.
- (j) The Contract Capacity is exclusively committed to the Buyer hereunder and no part of the Contract Capacity is subject to any physical or contractual arrangement that interferes with the Supplier's ability to satisfy the Facility Performance Obligations hereunder.
- (k) The Facility is capable of generating the Reference Seasonal ICAP while operating in accordance with Good Engineering and Operating Practices, under normal operating conditions and with ambient temperature conditions, as reported at the Environment Canada weather station that is physically nearest to the Facility, not exceeding +30.5 degrees Celsius in the Summer and not below -20 degrees Celsius in the Winter.

7.2 Representations of the Buyer

The Buyer represents to the Supplier as follows, and acknowledges that the Supplier is relying on such representations in entering into this Agreement:

- (a) The Buyer is a corporation without share capital created under the laws of Ontario, and has the requisite power to enter into this Agreement and to perform its obligations hereunder.
- (b) This Agreement has been duly authorized, executed, and delivered by the Buyer and is a valid and binding obligation of the Buyer enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted solely in the discretion of a court of competent jurisdiction.
- (c) The execution and delivery of this Agreement by the Buyer and the consummation of the transactions contemplated by this Agreement will not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or acceleration of any material obligation of the Buyer under:
 - (i) any contract or obligation to which the Buyer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the by-laws or resolutions of the directors (or any committee thereof) or shareholder of the Buyer;

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- (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
- (iv) any licence, permit, approval, consent or authorization held by the Buyer; or
- (v) any Laws and Regulations,

that could have a Material Adverse Effect on the Buyer.

- (d) There are no bankruptcy, insolvency, reorganization, receivership, seizure, realization, arrangement or other similar proceedings pending against, or being contemplated by the Buyer or, to the knowledge of the Buyer, threatened against the Buyer.
- (e) There are no actions, suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator, or, to the knowledge of the Buyer, threatened against the Buyer, that could have a Material Adverse Effect on the Buyer.
- (f) All requirements for the Buyer to make any declaration, filing or registration with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to entering into this Agreement have been satisfied.
- (g) The Buyer is in compliance with all Laws and Regulations other than acts of non-compliance which, individually or in the aggregate, would not have a Material Adverse Effect on the Buyer or on its obligations under this Agreement.

ARTICLE 8 CONFIDENTIALITY AND FIPPA

8.1 Confidential Information

From the Contract Date to and following the expiry of the Term, the Receiving Party shall keep confidential and secure and not disclose Confidential Information, except as follows:

- (a) The Receiving Party may disclose Confidential Information to its Representatives who need to know Confidential Information for the purpose of assisting the Receiving Party in complying with its obligations under this Agreement. On each copy made by the Receiving Party, the Receiving Party must reproduce all notices which appear on the original. The Receiving Party shall inform its Representatives of the confidentiality of Confidential Information and shall be responsible for any breach of this Article 8 by any of its Representatives.
- (b) If the Receiving Party or any of its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, court order, civil investigative demand, or similar process) to disclose any Confidential

Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any Laws and Regulations, order, regulation or ruling, the Receiving Party shall promptly notify the Disclosing Party. Unless the Disclosing Party obtains a protective order, the Receiving Party and its Representatives may disclose such portion of the Confidential Information to the Party seeking disclosure as is required by law or regulation in accordance with Section 8.2.

- (c) Where the Supplier is the Receiving Party, the Supplier may disclose Confidential Information to any Secured Lender or prospective lender or investor and its advisors, to the extent necessary, for securing financing for the Facility, provided that any such Secured Lender or prospective lender or investor has been informed of the Supplier's confidentiality obligations hereunder and such Secured Lender or prospective lender or investor has completed and executed a confidentiality undertaking (the "**Confidentiality Undertaking**") in the form referenced as Exhibit I, covenanting in favour of the Buyer to hold such Confidential Information confidential on terms substantially similar to this Article 8.
- (d) Notwithstanding the foregoing, the Supplier consents to the disclosure of: (i) its name and contact particulars (including its address for service and the name of its Company Representative) by the Buyer to all Other Suppliers for the purposes of Sections 1.6, and 1.7, ~~and 2.6~~; (ii) any information the Buyer or the System Operator is required to publish under the IESO Market Rules; and (iii) this Agreement in its entirety, except for Section 5.5.

8.2 Notice Preceding Compelled Disclosure

If the Receiving Party or any of its Representatives are requested or required to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party or its Representatives are compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the Party compelling disclosure as is required by Laws and Regulations only to such Person or Persons to which the Receiving Party is legally compelled to disclose and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall provide notice to each such recipient (in co-operation with legal counsel for the Disclosing Party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in this Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Confidential Information subject to those terms and conditions.

8.3 Return of Information

Upon written request by the Disclosing Party, Confidential Information provided by the Disclosing Party in printed paper format or electronic format will be returned to the Disclosing Party and Confidential Information transmitted by the Disclosing Party in electronic format will

be deleted from the emails and directories of the Receiving Party’s and its Representatives’ computers; provided, however, any Confidential Information (i) found in drafts, notes, studies and other documents prepared by or for the Receiving Party or its Representatives, (ii) found in electronic format as part of the Receiving Party’s off-site or on-site data storage/archival process system, or (iii) which is Mutually Confidential Information, will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed at the Receiving Party’s option. Notwithstanding the foregoing, a Receiving Party shall be entitled to make at its own expense and retain one copy of any Confidential Information materials it receives for the limited purpose of discharging any obligation it may have under Laws and Regulations, and shall keep such retained copy subject to the terms of this Article 8.

8.4 Injunctive and Other Relief

The Receiving Party acknowledges that breach of any provisions of this Article may cause irreparable harm to the Disclosing Party or to any third-party to whom the Disclosing Party owes a duty of confidence, and that the injury to the Disclosing Party or to any third-party may be difficult to calculate and inadequately compensable in damages. The Receiving Party agrees that the Disclosing Party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article 8.

8.5 FIPPA Records and Compliance

The Parties acknowledge and agree that the Buyer is subject to FIPPA and that FIPPA applies to and governs all Confidential Information in the custody or control of the Buyer (“**FIPPA Records**”) and may, subject to FIPPA, require the disclosure of such FIPPA Records to third parties. The Supplier agrees to provide a copy of any FIPPA Records that it previously provided to the Buyer if the Supplier continues to possess such FIPPA Records in a deliverable form at the time of the Buyer’s request. If the Supplier does possess such FIPPA Records in a deliverable form, it shall provide the same within a reasonable time after being directed to do so by the Buyer. The provisions of this Section 8.5 shall survive any termination or expiry of this Agreement and shall prevail over any inconsistent provisions in this Agreement.

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ARTICLE 9 TERM

9.1 Term

- (a) This Agreement shall be effective from the Contract Date to and until the end of the Term.
- (b) The “**Term**” means that period of time commencing at the beginning of the hour ending 01:00 hours (EST) on May 1, 202[●] *[Note to Finalization: Insert the “Commitment Period Starting Date” elected by the Supplier in its Proposal submitted in response to the MT I RFP, being either May 1, 2024, May 1, 2025 or May 1, 2026.]* (the “**Term Commencement Date**”); and ending at 24:00 hours (EST) on the day before the ~~(3rd)~~ fifth ~~(5th)~~ anniversary of the Term



Commencement Date, subject to ~~an extension pursuant to 9.1(e)~~ or an earlier termination in accordance with the provisions hereof.

- (c) The Supplier shall have the option, ~~exercisable in the sole and absolute discretion of the Supplier, to extend the Term for an additional period of two (2) years, to terminate this Agreement~~ by providing a written notice to the Buyer at least ~~sixten (610) months~~ Business Days immediately prior to the ~~third anniversary of the Term Commencement Date~~ effective date of termination, provided that such termination coincides with the execution of a separate, multi-year contract with the Buyer in relation to the Facility pursuant to a future procurement process undertaken by or on behalf of the Buyer.

ARTICLE 10 TERMINATION AND DEFAULT

10.1 Events of Default by the Supplier

Each of the following will constitute an Event of Default by the Supplier (each, a “**Supplier Event of Default**”):

- (a) The Supplier fails to make any payment when due or deliver and/or maintain the Performance Security as required under this Agreement, if such failure is not remedied within ten (10) Business Days after written notice of such failure from the Buyer.
- (b) The Supplier fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Supplier Event of Default) if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Buyer, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Supplier is diligently remedying such failure and such failure is capable of being cured during such extended cure period.
- (c) The Supplier fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Supplier and is not remedied within thirty (30) Business Days after receipt by the Supplier of written notice of such failure or cessation from the Buyer, provided that such cure period shall be extended by a further thirty (30) Business Days if the Supplier is diligently remedying such failure or cessation and such failure or cessation is capable of being corrected during such extended cure period.
- (d) Any representation made by the Supplier in this Agreement is not true or correct in any material respect when made and is not made true or correct in all material respects within thirty (30) Business Days after receipt by the Supplier of written notice of such fact from the Buyer, provided that such cure period (i) shall be

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extended for a further period of thirty (30) Business Days and (ii) may be extended by such further period of time as the Buyer in its sole and absolute discretion determines is reasonable, if, in each case, the Supplier is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.

- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering, the dissolution, termination of existence, liquidation or winding up of the Supplier, unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless, in the case of the Supplier, there has been a permitted and valid assignment of this Agreement by the Supplier under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Supplier's obligations under this Agreement.
- (f) The Supplier amalgamates with, or merges with or into, or transfers the Facility or all or substantially all of its assets to, another Person unless, at the time of such amalgamation, merger or transfer, there has been a permitted and valid assignment hereof by the Supplier under this Agreement to the resulting, surviving or transferee Person and such Person has assumed all of the Supplier's obligations under this Agreement.
- (g) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Supplier or of any of the Supplier's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of a Governmental Authority, the Supplier is adjudicated bankrupt or insolvent or any substantial part of the Supplier's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Supplier seeking to have the Supplier declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (h) The Supplier makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy, or liquidator for all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provisions of any Insolvency Legislation.
- (i) Either of the defaults described in Sections 145.6(e) and 145.6(g)(i) has occurred.
- (j) The Supplier assigns this Agreement without first obtaining the consent of the Buyer, if required pursuant to this Agreement.

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- (k) The Supplier fails to complete the Pre-Term Capacity Verification prior to the Longstop Date pursuant to Section 2.2.
- (l) If the Facility is a Must-Offer Facility, the average of the Monthly Average Offered Quantity, ~~measured over any cumulative, rolling, three-month period during for each Settlement Month in~~ any Season ~~following~~ during the Term ~~Commencement Date, excluding any Sole Annual Planned Maintenance Month,~~ is less than ninety percent (90%) of the average of the Monthly Minimum Offer Quantity for such ~~three-month period~~ Settlement Months. For ~~clarity, the cumulative, rolling three-month period for~~ purposes of this Section 10.1(l), the calculation of the average of the Monthly Average Offered Quantity for each Settlement Month in any Season will restart at the commencement of each Season during the Term, requiring the completion of ~~three (3) months in any~~ the Season before it can be applicable.
- (m) If the Facility is an FCF Facility, the average of the Monthly Facility Capacity Factor, ~~measured over any cumulative, rolling three-month period during for each Settlement Month in~~ any Season ~~following~~ during the Term ~~Commencement Date, excluding any Sole Annual Planned Maintenance Month,~~ is less than ninety percent (90%) of the average Monthly Minimum Capacity Factor for such ~~three-month period~~ Settlement Months. For ~~clarity, the cumulative, rolling 3-month period for~~ purposes of this Section 10.1(m), the calculation of the average of the Monthly Facility Capacity Factor for each Settlement Month in any Season will restart at the commencement of each Season during the Term, requiring the completion of ~~three (3) months in any~~ the Season before it can be applicable.

10.2 Remedies of the Buyer

- (a) If any Supplier Event of Default (other than a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g), and 10.1(h)) occurs and is continuing, upon written notice to the Supplier, the Buyer may, subject to Article 12, terminate this Agreement.
- (b) If a Supplier Event of Default occurs and is continuing, the Buyer may, in addition to the remedies set out in Section 10.2(a):
 - (i) set off any payments due to the Supplier against any amounts payable by the Supplier to the Buyer including, at the Buyer's option, the amount of any Performance Security provided to the Buyer pursuant to Article 6; and
 - (ii) draw on the Performance Security, or any part thereof and, if the remedy in Section 10.2(a) has not been exercised, require the Supplier to replace such drawn security with new security.
- (c) Notwithstanding Sections 10.2(a), and 10.2(b), upon the occurrence of a Supplier Event of Default referred to in Sections 10.1(e), 10.1(g) or 10.1(h), this

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Agreement shall automatically terminate without notice, act or formality, effective immediately before the occurrence of such Supplier Event of Default, in which case, for certainty, the Secured Lender shall have the rights available to it under Section 12.2(g).

- (d) If the Buyer terminates this Agreement pursuant to Section 10.2(a) or this Agreement is terminated pursuant to Section 10.2(c), the Buyer shall have the option, exercisable in the sole and absolute discretion of the Buyer, to retain all Performance Security provided by or on behalf of the Supplier and exercise all other remedies available to the Buyer including pursuing a claim for damages, as contemplated in Section 10.5.
- (e) Termination shall not relieve the Supplier or the Buyer of their respective responsibilities relating to the availability of ~~the Contract Capacity and delivery of the Electricity, Related Products, and Environmental Attributes from the Facility that relate to~~ the Contract Capacity, or amounts payable under this Agreement, up to and including the Termination Date. The Buyer shall be responsible only for the payment of amounts accruing under this Agreement up to and including the Termination Date. In addition to its other rights of set off available to it pursuant to this Agreement and at law, the Buyer may hold back payment or set off its obligation to make such payment against any payments owed to it if the Supplier fails to comply with its obligations on termination.

10.3 Events of Default by the Buyer

Each of the following will constitute an Event of Default by the Buyer (each, a “**Buyer Event of Default**”):

- (a) The Buyer fails to make any payment under this Agreement when due, if such failure is not remedied within ten (10) Business Days after written notice of such failure from the Supplier.
- (b) The Buyer fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Buyer Event of Default), if such failure is not remedied within fifteen (15) Business Days after written notice of such failure from the Supplier, provided that such cure period shall be extended by a further fifteen (15) Business Days if the Buyer is diligently remedying such failure and such failure is capable of being cured during such extended cure period.
- (c) The Buyer fails or ceases to hold a valid licence, permit, certificate, registration, authorization, consent or approval issued by a Governmental Authority where such failure or cessation results in, or could be reasonably expected to result in, a Material Adverse Effect on the Buyer and is not remedied within thirty (30) Business Days after receipt by the Buyer of written notice of such failure or cessation from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently remedying such failure

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or cessation and such failure or cessation is capable of being corrected during such extended cure period.

- (d) Any representation made by the Buyer in this Agreement is not materially true or correct in any material respect when made and is not made materially true or correct within thirty (30) Business Days after receipt by the Buyer of written notice of such fact from the Supplier, provided that such cure period shall be extended by a further thirty (30) Business Days if the Buyer is diligently correcting such breach and such breach is capable of being corrected during such extended cure period.
- (e) An effective resolution is passed or documents are filed in an office of public record in respect of, or a judgment or order is issued by a court of competent jurisdiction ordering the dissolution, termination of existence, liquidation or winding up of the Buyer unless such filed documents are immediately revoked or otherwise rendered inapplicable, or unless there has been a permitted and valid assignment of this Agreement by the Buyer under this Agreement to a Person which is not dissolving, terminating its existence, liquidating or winding up and such Person has assumed all of the Buyer's obligations under this Agreement.
- (f) A receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy of the Buyer or of any of the Buyer's property is appointed by a Governmental Authority or pursuant to the terms of a debenture or a similar instrument, and such receiver, manager, receiver-manager, liquidator, monitor or trustee in bankruptcy is not discharged or such appointment is not revoked or withdrawn within thirty (30) days of the appointment. By decree, judgment or order of Governmental Authority, the Buyer is adjudicated bankrupt or insolvent or any substantial part of the Buyer's property is sequestered, and such decree, judgment or order continues undischarged and unstayed for a period of thirty (30) days after the entry thereof. A petition, proceeding or filing is made against the Buyer seeking to have it declared bankrupt or insolvent, or seeking adjustment or composition of any of its debts pursuant to the provisions of any Insolvency Legislation, and such petition, proceeding or filing is not dismissed or withdrawn within thirty (30) days.
- (g) The Buyer makes an assignment for the benefit of its creditors generally under any Insolvency Legislation, or consents to the appointment of a receiver, manager, receiver-manager, monitor, trustee in bankruptcy or liquidator, of it or of all or part of its property or files a petition or proposal to declare bankruptcy or to reorganize pursuant to the provision of any Insolvency Legislation.
- (h) The Buyer assigns this Agreement without first obtaining the consent of the Supplier, if required pursuant to this Agreement.

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10.4 Termination by the Supplier

- (a) If any Buyer Event of Default occurs and is continuing, then upon written notice to the Buyer, the Supplier may: (i) terminate this Agreement, and (ii) set off any payments due to the Buyer against any amounts payable by the Buyer to the Supplier.
- (b) Notwithstanding the foregoing, if applicable, the Buyer shall be responsible for payment of amounts accruing under this Agreement only up to and including the Termination Date. The Supplier may hold back payment or set off against any payments owed by it if the Buyer fails to comply with its obligations on termination.

10.5 Remedies for Termination Non-Exclusive

The termination of this Agreement by either Party and the payment of all amounts then due and owing to the other Party as expressly provided in this Agreement shall not limit, waive or extinguish in any way the recourse of either Party to any remedies available to it in relation to such termination at law, in equity or otherwise, nor shall such termination affect any rights that the Indemnitees may have pursuant to any indemnity given under this Agreement.

ARTICLE 11 FORCE MAJEURE

11.1 Effect of Invoking Force Majeure

- (a) If, by reason of Force Majeure:
 - (i) the Supplier is unable to make available all or any part of the Contract Capacity during the Term or is unable to deliver Electricity from the Facility during the Term; or
 - (ii) either Party is unable, wholly or partially, to perform or comply with its other obligations (other than payment obligations) hereunder;

then the Party so affected by Force Majeure shall be excused and relieved from performing or complying with such obligations (other than payment obligations) and shall not be liable for any liabilities, damages, losses, payments, costs, expenses (or Indemnifiable Losses, in the case of the Supplier affected by Force Majeure) to, or incurred by, the other Party in respect of or relating to such Force Majeure and such Party's failure to so perform or comply during the continuance and to the extent of the inability so caused from and after the invocation of Force Majeure.

Notwithstanding the foregoing, Force Majeure shall not relieve or impact the timing of the Supplier's obligation to complete the Pre-Term Capacity Verification ~~in accordance with Section 2.2~~ prior to the Longstop Date or to

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otherwise extend the Term or the Term Commencement Date. Additionally, notwithstanding the prior paragraph of this Section 11.1(a), during such time as the Supplier is so unable to perform or comply with its obligations as a result of a Force Majeure, to the extent that the Supplier is able to deliver a portion of the Contract Capacity and Electricity from the Facility despite an event of Force Majeure, then the calculation of Monthly Payment will be made with respect to such portion of the Contract Capacity and Electricity delivered in accordance with Exhibit J.

- (b) A Party shall be deemed to have invoked Force Majeure with effect from the commencement of the event or circumstances constituting Force Majeure when that Party gives to the other Party prompt notice, written or oral (but if oral, promptly confirmed in writing) of the effect of the Force Majeure and reasonably full particulars of the cause thereof, in substantially the form as set forth in Exhibit H, provided that such notice shall be given within ten (10) Business Days of the commencement of the event or circumstances constituting Force Majeure. Where a Party fails to provide notice of the commencement of the event or circumstances constituting Force Majeure within ten (10) Business Days of the commencement of such event or circumstances, such Party shall be deemed to have invoked Force Majeure with effect from the date when that Party gives to the other Party written notice in substantially the form as set forth in Exhibit H, of the event or circumstances constituting Force Majeure. If the effect of the Force Majeure and full particulars of the cause thereof cannot be reasonably determined within such ten (10) Business Day period, the Party invoking Force Majeure shall be allowed a further ten (10) Business Days (or such longer period as the Parties may agree in writing) to provide such full particulars, in substantially the form set forth as Exhibit H, to the other Party.
- (c) The Party invoking Force Majeure shall use Commercially Reasonable Efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure, but settlement of strikes, lockouts and other labour disturbances shall be wholly within the discretion of the Party involved.
- (d) The Party invoking Force Majeure shall give prompt written notice of the termination of the event of Force Majeure, provided that such notice shall be given within ten (10) Business Days of the termination of the event or circumstances constituting Force Majeure.
- (e) Nothing in this Section 11.1 shall relieve a Party of its obligations to make payments of any amounts that were due and owing before the occurrence of the Force Majeure or that otherwise may become due and payable during any period of Force Majeure.
- (f) If, by reason of Force Majeure, the Supplier is unable to perform or comply with its obligations (other than payment obligations) hereunder for more than an aggregate of thirty-six (36) months in any sixty (60) month period during the Term, then either Party may terminate this Agreement upon notice to the other

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Party without any costs or payments of any kind to either Party, except for any amounts that were due or payable by a Party hereunder up to the date of termination, and all security shall be returned forthwith.

11.2 Exclusions

A Party shall not be entitled to invoke Force Majeure under this Article 11, nor shall it be relieved of its obligations hereunder in any of the following circumstances:

- (a) if and to the extent the Party seeking to invoke Force Majeure has caused the applicable event of Force Majeure by its fault or negligence, including the Supplier's failure to procure or maintain any fuel supply to be utilized by the Facility;
- (b) if and to the extent the Party seeking to invoke Force Majeure has failed to use Commercially Reasonable Efforts to prevent or remedy the event of Force Majeure and remove, so far as possible and within a reasonable time period, the Force Majeure (except in the case of strikes, lockouts and other labour disturbances, the settlement of which shall be wholly within the discretion of the Party involved);
- (c) if and to the extent that the Party seeking to invoke Force Majeure because of arrest or restraint by a Governmental Authority, such arrest or restraint was the result of a breach by such Party of Laws and Regulations;
- (d) if the Force Majeure was caused by a lack of funds or other financial cause;
- (e) if the System Operator amends the schedule of Planned Outages for the Facility as set out in the Annual Operating Plan;
- (f) if the Party invoking Force Majeure fails to comply with the notice provisions in Sections 11.1(b) or 11.1(d); or
- (g) in respect of any impacts of the COVID-19 pandemic that were known or ought reasonably to be known by the Supplier as of the Contract Date.

For greater certainty, actions of the Buyer that are not actions of the System Operator shall not constitute Force Majeure.

11.3 Definition of Force Majeure

For the purposes of this Agreement, the term "**Force Majeure**" means any act, event, cause or condition that prevents a Party from performing its obligations (other than payment obligations) hereunder, and that is beyond the affected Party's reasonable control, and shall include:

- (a) acts of God, including extreme wind, ice, lightning or other storms, earthquakes, tornadoes, hurricanes, cyclones, landslides, drought, floods and washouts;
- (b) fires or explosions;

- (c) local, regional or national states of emergency;
- (d) strikes and other labour disputes (other than legal strikes or labour disputes by employees of such Party or third party) invoking Force Majeure, unless such strikes or labour disputes are the result or part of a general industry strike or labour dispute;
- (e) delays or disruptions in fuel supply or cooling water supply resulting from a Force Majeure event (whether such event is in respect of a Party or a third party);
- (f) civil disobedience or disturbances, war (whether declared or not), acts of sabotage, blockades, insurrections, terrorism, revolution, riots or epidemics;
- (g) an order, judgment, legislation, ruling or direction by Governmental Authorities restraining a Party, provided that the affected Party has not applied for or assisted in the application for and has used Commercially Reasonable Efforts to oppose said order, judgment, legislation, ruling or direction;
- (h) any inability to obtain, or to secure the renewal or amendment of, any permit, certificate, impact assessment, licence or approval of any Governmental Authority, Transmitter or LDC required to perform or comply with any obligation under this Agreement, unless the revocation or modification of any such necessary permit, certificate, impact assessment, licence or approval was caused by the violation of the terms thereof or consented to by the Party invoking Force Majeure;
- (i) any unanticipated maintenance or outage affecting the Facility:
 - (i) which is not identified in the Supplier's then current schedule of Planned Outages submitted to the Buyer or the LDC, as the case may be, in advance of the occurrence of an event of Force Majeure referred to in this Section 11.3, and
 - (ii) which results directly from, or is scheduled or planned directly as a consequence of, an event of Force Majeure referred to in this Section 11.3, or which results from a failure of equipment that prevents the Facility from producing Electricity, provided that:
 - (A) notice of the unanticipated maintenance or outage is provided to the Buyer by the Supplier concurrently, or as soon as reasonably possible thereafter, with the notice in respect thereof provided to the System Operator under the IESO Market Rules but, in any event, within ten (10) Business Days thereof;
 - (B) the Supplier provides notice to the Buyer immediately, or as soon as reasonably possible thereafter, upon receipt from the System Operator of advance acceptance or other proposed scheduling or

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approval of such maintenance or outage, if such approval is required to be obtained from the System Operator;

- (C) the Supplier provides timely updates to the Buyer of the commencement date of the maintenance or outage and, where possible, provides seven (7) days advance notice of such date;
- (D) the unanticipated maintenance or outage is commenced within one hundred and twenty (120) days of the commencement of the occurrence of the relevant event of Force Majeure; and
- (E) the Supplier schedules the unanticipated maintenance or outage in accordance with Good Engineering and Operating Practices.

For greater certainty, nothing in Section 11.3(i) shall be construed as limiting the duration of an event of Force Majeure. Each Party shall resume its obligations as soon as the event of Force Majeure has been overcome.

ARTICLE 12 LENDER'S RIGHTS

12.1 Lender Security

Notwithstanding Section 156.5, the Supplier, from time to time on or after the date of execution of this Agreement shall have the right, at its cost, to enter into a Secured Lender's Security Agreement. For the avoidance of doubt, in the case of a deed of trust or similar instrument securing bonds or debentures where the trustee holds security on behalf of, or for the benefit of, other lenders, only the trustee shall be entitled to exercise the rights and remedies under the Secured Lender's Security Agreement as the Secured Lender on behalf of the lenders. A Secured Lender's Security Agreement shall be based upon and subject to the following conditions:

- (a) A Secured Lender's Security Agreement may be made for any amounts and upon any terms (including terms of the loans, interest rates, payment terms and prepayment privileges or restrictions) as desired by the Supplier, except as otherwise provided in this Agreement.
- (b) No Secured Lender's Security Agreement shall affect or encumber in any manner the Buyer's title to any government-owned premises. The Buyer shall have no liability whatsoever for payment of the principal sum secured by any Secured Lender's Security Agreement, or any interest accrued thereon or any other sum secured thereby or accruing thereunder; and the Secured Lender shall not be entitled to seek any damages against the Buyer for any or all of the same.
- (c) No Secured Lender's Security Agreement shall be binding upon the Buyer in the enforcement of the Buyer's rights and remedies provided in this Agreement or by Laws and Regulations, unless and until a copy of the original thereof and the registration details, if applicable, together with written notice of the address of the

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Secured Lender to which notices may be sent have been delivered to the Buyer by the Supplier or the Secured Lender; and in the event of an assignment of such Secured Lender's Security Agreement, such assignment shall not be binding upon the Buyer unless and until a copy thereof and the registration details, if applicable, together with written notice of the address of the assignee thereof to which notices may be sent, have been delivered to the Buyer by the Supplier or the Secured Lender.

- (d) If the Supplier is in default under or pursuant to the Secured Lender's Security Agreement and the Secured Lender intends to exercise any rights afforded to the Secured Lender under this Agreement, then the Secured Lender shall give notice of such default to the Buyer at least five (5) Business Days prior to exercising any such rights.
- (e) Any Secured Lender's Security Agreement permitted hereunder may secure two (2) or more separate debts, liabilities or obligations in favour of two (2) or more separate Secured Lenders, provided that such Secured Lender's Security Agreement complies with the provisions of this Article 12.
- (f) Any number of permitted Secured Lender's Security Agreements may be outstanding at any one time, provided that each such Secured Lender's Security Agreement complies with the provisions of this Article 12.
- (g) All rights acquired by a Secured Lender under any Secured Lender's Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein. While any Secured Lender's Security Agreement is outstanding, the Buyer and the Supplier shall not amend or supplement this Agreement or agree to a termination of this Agreement without the consent of the Secured Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. A Secured Lender must respond within a reasonable period of time to any request to amend or supplement this Agreement.
- (h) Despite any enforcement of any Secured Lender's Security Agreement, the Supplier shall remain liable to the Buyer for the payment of all sums owing to the Buyer under this Agreement and for the performance of all of the Supplier's obligations under this Agreement.

12.2 Rights and Obligations of Secured Lenders

While any Secured Lender's Security Agreement remains outstanding, and if the Buyer has received the notice referred to in Section 12.1(c) or the contents thereof are embodied in the agreement entered into by the Buyer in accordance with Section 12.3, the following provisions shall apply:

- (a) No Supplier Event of Default (other than those set out in Section 10.2(c)) shall be grounds for the termination by the Buyer of this Agreement until:

- (i) any notice required to be given under Section 10.1 and Section 10.2(a) has been given to the Supplier and to the Secured Lender; and
 - (ii) the cure period set out in Section 12.2(b) has expired without a cure having been completed and without the Secured Lender having taken the actions therein contemplated.
- (b) In the event the Buyer has given any notice required to be given under Section 10.1, the Secured Lender shall, within the applicable cure period (including any extensions), if any, have the right (but not the obligation) to cure such default, and the Buyer shall accept such performance by such Secured Lender as if the same had been performed by the Supplier.
- (c) Any payment to be made or action to be taken by a Secured Lender hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Secured Lender if such payment is made or action is taken by a nominee or agent of the Secured Lender or a receiver or receiver and manager appointed by or on the application of the Secured Lender.
- (d) A Secured Lender shall be entitled to the Supplier's rights and benefits contained in this Agreement and shall become liable for the Supplier's obligations solely as provided in Section 12.2. A Secured Lender may, subject to the provisions of this Agreement, enforce any Secured Lender's Security Agreement and acquire the Supplier's Interest in any lawful way and, without limitation, a Secured Lender or its nominee or agent or a receiver or receiver and manager appointed by or on the application of the Secured Lender, may take possession of and manage the Facility and, upon foreclosure, or without foreclosure upon exercise of any contractual or statutory power of sale under such Secured Lender's Security Agreement, may sell or assign the Supplier's Interest with the consent of the Buyer as required under Section 12.2(f).
- (e) Until a Secured Lender (i) forecloses or has otherwise taken ownership of the Supplier's Interest or (ii) has taken possession or control of the Supplier's Interest, whether directly or by an agent as a mortgagee in possession, or a receiver or receiver and manager has taken possession or control of the Supplier's Interest by reference to the Secured Lender's Security Agreement, the Secured Lender shall not be liable for any of the Supplier's obligations or be entitled to any of the Supplier's rights and benefits contained in this Agreement, except by way of security. If the Secured Lender itself or by a nominee or agent, or a receiver or a receiver and manager appointed by or on the application of the Secured Lender, is the owner or is in control or possession of the Supplier's Interest, then the entity that is the owner or is in control or possession of the Supplier's Interest shall be bound by all of the Supplier's obligations. Once the Secured Lender or such other Person goes out of possession or control of the Supplier's Interest or transfers the Supplier's Interest in accordance with this Agreement to another Person who is at Arm's Length with the Secured Lender, the Secured Lender shall cease to be liable for any of the Supplier's obligations

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and shall cease to be entitled to any of the Supplier's rights and benefits contained in this Agreement, except, if the Secured Lender's Security Agreement remains outstanding, by way of security.

- (f) Despite anything else contained in this Agreement, any Person to whom the Supplier's Interest is transferred shall take the Supplier's Interest subject to the Supplier's obligations. No transfer shall be effective unless the Buyer:
- (i) acting reasonably, if such transferee is at Arm's Length with the Secured Lender; or
 - (ii) acting in its sole and subjective discretion, if such transferee is not at Arm's Length with the Secured Lender,

has approved of the transferee and the transferee has entered into an agreement with the Buyer in form and substance satisfactory to the Buyer, acting reasonably, wherein the transferee agrees to assume and to perform the obligations of the Supplier in respect of the Supplier's Interest, whether arising before or after the transfer, and including the posting of the Performance Security required under Article 6.

- (g) In the event of the termination of this Agreement prior to the end of the Term due to a Supplier Event of Default, the Buyer shall, within ten (10) days after the date of such termination, deliver to each Secured Lender which is at Arm's Length with the Supplier a statement of all sums then known to the Buyer that would at that time be due under this Agreement but for the termination and a notice to each such Secured Lender stating that the Buyer is willing to enter into a New Agreement (the "**Buyer Statement**"). Subject to the provisions of this Article 12, each such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof shall thereupon have the option to obtain from the Buyer a New Agreement in accordance with the following terms:

- (i) Upon receipt of the written request of the Secured Lender within thirty (30) days after the date on which it received the Buyer Statement, the Buyer shall enter into a New Agreement.
- (ii) Such New Agreement shall be effective as of the Termination Date and shall be for the remainder of the Term at the time this Agreement was terminated and otherwise upon the terms contained in this Agreement. The Buyer's obligation to enter into a New Agreement is conditional upon the Secured Lender (A) paying all sums that would, at the time of the execution and delivery thereof, be due under this Agreement but for such termination, (B) otherwise fully curing any defaults under this Agreement existing immediately prior to termination of this Agreement that are capable of being cured, and (C) paying all reasonable costs and expenses, including legal fees, so as to provide a full indemnity (and not only substantial indemnity), incurred by the Buyer in connection with such

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default and termination, and the preparation, execution and delivery of such New Agreement and related agreements and documents, provided, however, that with respect to any default that could not be cured by such Secured Lender until it obtains possession, such Secured Lender or its transferee approved by the Buyer pursuant to Section 12.2(f) hereof, as the case may be, shall have the applicable cure period commencing on the date that it obtains possession to cure such default.

When the Secured Lender has appointed an agent, a receiver or a receiver and manager or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Secured Lender’s security, that Person may exercise any of the Secured Lender’s rights under this Section 12.2(g).

- (h) Despite anything to the contrary contained in this Agreement, the provisions of this Article 12 shall enure only to the benefit of the holders of a Secured Lender’s Security Agreement. If the holders of more than one such Secured Lender’s Security Agreement who are at Arm’s Length with the Supplier make written requests to the Buyer in accordance with this Section 12.2 to obtain a New Agreement, the Buyer shall accept the request of the holder whose Secured Lender’s Security Agreement had priority immediately prior to the termination of this Agreement over the Secured Lender’s Security Agreements of the other Secured Lenders making such requests and thereupon the written request of each other Secured Lender shall be deemed to be void. In the event of any dispute or disagreement as to the respective priorities of any such Secured Lender’s Security Agreement, the Buyer may rely upon the opinion as to such priorities of any law firm qualified to practice law in the Province of Ontario retained by the Buyer in its unqualified subjective discretion or may apply to a court of competent jurisdiction for a declaration as to such priorities, which opinion or declaration shall be conclusively binding upon all parties concerned.

12.3 Cooperation

The Buyer and the Supplier shall enter into an agreement with any Secured Lender for the purpose of implementing the Secured Lender’s Security Agreement protection provisions contained in this Agreement. The Buyer, acting reasonably, shall consider any request jointly made by the Supplier and a Secured Lender or proposed Secured Lender to facilitate a provision of a Secured Lender’s Security Agreement or proposed Secured Lender’s Security Agreement that may require an amendment to this Agreement, provided that the rights of the Buyer are not adversely affected thereby, the obligations of the Supplier to the Buyer are not altered thereby and the consent of any other Secured Lender to such amendment has been obtained by the Supplier or the Secured Lender making the request for the amendment.

ARTICLE 13 DISCRIMINATORY ACTION

13.1 Discriminatory Action

A “Discriminatory Action” shall occur if:



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- (a)
- (i) the Legislative Assembly of Ontario causes to come into force any statute that was introduced as a bill in the Legislative Assembly of Ontario or the Government of Ontario causes to come into force or makes any order-in-council or regulation first having legal effect on or after the date hereof; or
 - (ii) the Legislative Assembly of Ontario directly or indirectly amends this Agreement without the agreement of the Supplier;
- (b) the effect of the action referred to in Section 13.1(a):
- (i) is borne principally by the Supplier; or
 - (ii) is borne principally by the Supplier and one or more Other Suppliers; and
- (c) such action increases the costs that the Supplier would reasonably be expected to incur under this Agreement to satisfy the Must-Offer Obligation or the Facility Capacity Factor Obligation (as applicable), except where such action is in response to any act or omission on the part of the Supplier that is contrary to Laws and Regulations (other than an act or omission rendered illegal by virtue of such action) or such action is permitted under this Agreement. Despite the preceding sentence, none of the following shall be a Discriminatory Action:
- (i) Laws and Regulations of general application, including an increase of Taxes of general application, or any action of the Government of Ontario pursuant thereto;
 - (ii) any such statute that prior to five (5) Business Days prior to the Contract Date:
 - (A) has been introduced as a bill in the Legislative Assembly of Ontario in a similar form as such statute takes when it has legal effect, provided that any amendments made to such bill in becoming such statute do not have a Material Adverse Effect on the Supplier; or
 - (B) has been made public in a discussion or consultation paper, press release or announcement issued by the Buyer, the Government of Ontario, and/or the Ministry of Energy that appeared on the Buyer's Website or the website of the Government of Ontario and/or the Ministry of Energy, provided that any amendments made to such public form, in becoming such statute, do not have a Material Adverse Effect on the Supplier; and
 - (iii) any of such regulations that prior to five (5) Business Days prior to the Contract Date:

- (A) have been published in the Ontario Gazette but by the terms of such regulations come into force on or after five (5) Business Days prior to the Contract Date, or
- (B) have been referred to in a press release issued by the Buyer, the Government of Ontario and/or the Ministry of Energy that appeared on the website of the Government of Ontario or the Ministry of Energy, provided that any amendments made to such regulations in coming into force do not have a Material Adverse Effect on the Supplier.

13.2 Consequences of Discriminatory Action

If a Discriminatory Action occurs, the Supplier shall have the right to obtain, without duplication, compensation (the “**Discriminatory Action Compensation**”) from the Buyer for the amount of the increase in the costs that the Supplier would reasonably be expected to incur to satisfy the Must-Offer Obligation or the Facility Capacity Factor Obligation (as applicable) as a result of the occurrence of such Discriminatory Action, commencing on the first day of the first calendar month following the date of the Discriminatory Action and ending at the expiry of the Term, but excluding the portion of any costs charged by a Person who does not deal at Arm’s Length with the Supplier that is in excess of the costs that would have been charged had such Person been at Arm’s Length with the Supplier.

13.3 Notice of Discriminatory Action

- (a) In order to exercise its rights in the event of the occurrence of a Discriminatory Action, the Supplier must give a notice (the “**Preliminary Notice**”) to the Buyer within sixty (60) days after the date on which the Supplier first became aware (or should have been aware, using reasonable due diligence) of the Discriminatory Action stating that a Discriminatory Action has occurred. Within sixty (60) days after the date of receipt of the Preliminary Notice, the Supplier must give another notice (the “**Notice of Discriminatory Action**”). A Notice of Discriminatory Action must include:
 - (i) a statement of the Discriminatory Action that has occurred;
 - (ii) details of the effect of the said occurrence that is borne by the Supplier;
 - (iii) details of the manner in which the Discriminatory Action increases the costs that the Supplier would reasonably be expected to incur under this Agreement in satisfying the Must-Offer Obligation or the Facility Capacity Factor Obligation (as applicable); and
 - (iv) the amount claimed as Discriminatory Action Compensation and details of the computation thereof.

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The Buyer shall, after receipt of a Notice of Discriminatory Action, be entitled, by notice given within thirty (30) days after the date of receipt of the Notice of Discriminatory Action, to require the Supplier to provide such further supporting particulars as the Buyer considers necessary, acting reasonably.

(b) If the Buyer wishes to dispute the occurrence of a Discriminatory Action, the Buyer shall give a notice of dispute (the “**Notice of Dispute**”) to the Supplier, stating the grounds for such dispute, within thirty (30) days after the date of receipt of the Notice of Discriminatory Action or within thirty (30) days after the date of receipt of the further supporting particulars, as applicable.

(c) If neither the Notice of Discriminatory Action nor the Notice of Dispute has been withdrawn within thirty (30) days after the date of receipt of the Notice of Dispute by the Supplier, the dispute of the occurrence of a Discriminatory Action shall be submitted to mandatory and binding arbitration in accordance with Section 16.2 without first having to comply with Section 16.1.

(d) If the Buyer does not dispute the occurrence of a Discriminatory Action or the amount of Discriminatory Action Compensation claimed in the Notice of Discriminatory Action, the Buyer shall pay to the Supplier the amount of Discriminatory Action Compensation claimed within sixty (60) days after the date of receipt of the Notice of Discriminatory Action. If a Notice of Dispute has been given, the Buyer shall pay to the Supplier the Discriminatory Action Compensation Amount determined in accordance with Section 13.3(e) not later than sixty (60) days after the later of the date on which the dispute with respect to the occurrence of a Discriminatory Action is resolved and the date on which the Discriminatory Action Compensation Amount is determined.

(e)

(i) If the Buyer wishes to dispute the amount of the Discriminatory Action Compensation, the Buyer shall give to the Supplier a notice (the “**Discriminatory Action Compensation Notice**”) setting out an amount that the Buyer proposes as the Discriminatory Action Compensation (the “**Discriminatory Action Compensation Amount**”), if any, together with details of the computation. If the Supplier does not give notice (the “**Supplier Non-acceptance Notice**”) to the Buyer stating that it does not accept the Discriminatory Action Compensation Amount proposed within thirty (30) days after the date of receipt of the Discriminatory Action Compensation Notice, the Supplier shall be deemed to have accepted the Discriminatory Action Compensation Amount so proposed. If the Supplier Non-acceptance Notice is given, the Buyer and the Supplier shall attempt to determine the Discriminatory Action Compensation Amount through negotiation, and any amount so agreed in writing shall be the Discriminatory Action Compensation Amount. If the Buyer and the Supplier do not agree in writing upon the Discriminatory Action Compensation Amount within sixty (60) days after the date of receipt of

the Supplier Non-acceptance Notice, the Discriminatory Action Compensation Amount shall be determined in accordance with the procedure set forth in Section 13.3(e)(ii) and Sections 16.1 and 16.2 shall not apply to such determination.

- (ii) If the negotiation described in Section 13.3(e)(i) does not result in an agreement in writing on the Discriminatory Action Compensation Amount, either the Buyer or the Supplier may, after the later of (A) the date on which a dispute with respect to the occurrence of a Discriminatory Action is resolved and (B) the date of the expiry of a period of thirty (30) days after the date of receipt of the Supplier Non-acceptance Notice, by notice to the other require the dispute to be resolved by arbitration as set out below. The Buyer and the Supplier shall, within thirty (30) days after the date of receipt of such notice of arbitration, jointly appoint a valuator to determine the Discriminatory Action Compensation Amount. The valuator so appointed shall be a duly qualified business valuator where the individual responsible for the valuation has not less than ten (10) years' experience in the field of business valuation. If the Buyer and the Supplier are unable to agree upon a valuator within such period, the Buyer and the Supplier shall jointly make application (provided that if a Party does not participate in such application, the other Party may make application alone) under the *Arbitration Act, 1991* (Ontario) to a judge of the Superior Court of Justice to appoint a valuator, and the provisions of the *Arbitration Act, 1991* (Ontario) shall govern such appointment. The valuator shall determine the Discriminatory Action Compensation Amount within sixty (60) Business Days after the date of his or her appointment. Pending a decision by the valuator, the Buyer and the Supplier shall share equally, and be responsible for their respective shares of, all fees and expenses of the valuator. The fees and expenses of the valuator shall be paid by the non-prevailing party. "Prevailing Party" means the Party whose determination of the Discriminatory Action Compensation Amount is most nearly equal to that of the valuator's determination. The Supplier's and the Buyer's respective determinations of the Discriminatory Action Compensation Amount shall be based upon the Notice of Discriminatory Action and the Discriminatory Action Compensation Notice, as applicable.
- (iii) In order to facilitate the determination of the Discriminatory Action Compensation Amount by the valuator, each of the Buyer and the Supplier shall provide to the valuator such information as may be requested by the valuator, acting reasonably, and the Supplier shall permit the valuator and the valuator's representatives to have reasonable access during normal business hours to such information and to take extracts therefrom and to make copies thereof.
- (iv) The Discriminatory Action Compensation Amount as determined by the valuator shall be final and conclusive and not subject to any appeal.

- (f) Any amount to be paid under Section 13.3(d) shall bear interest at a variable nominal rate per annum equal on each day to the Interest Rate then in effect from the date of receipt of the Notice of Discriminatory Action to the date of payment.
- (g) Payment of the Discriminatory Action Compensation and interest thereon by the Buyer to the Supplier shall constitute full and final satisfaction of all amounts that may be claimed by the Supplier for and in respect of the occurrence of the Discriminatory Action and, upon such payment, the Buyer shall be released and forever discharged by the Supplier from any and all liability in respect of such Discriminatory Action.

13.4 Right of the Buyer to Remedy or Cause to be Remedied a Discriminatory Action

If the Buyer wishes to remedy or cause to be remedied the occurrence of a Discriminatory Action, the Buyer must give notice to the Supplier within thirty (30) days after the later of the date of receipt of the Notice of Discriminatory Action and the date of the receipt by the Buyer of the further supporting particulars referred to in Section 13.3(a). If the Buyer gives such notice, the Buyer must remedy or cause to be remedied the Discriminatory Action within one hundred and eighty (180) days after the date of receipt of the Notice of Discriminatory Action or, if a Notice of Dispute has been given, within one hundred and eighty (180) days after the date of the final award pursuant to Section 16.2 to the effect that a Discriminatory Action occurred. If the Buyer remedies or causes to be remedied the Discriminatory Action in accordance with the preceding sentence, the Supplier shall have the right to obtain, without duplication, the amount that the Supplier would have the right to claim in respect of that Discriminatory Action pursuant to Section 13.2, adjusted to apply only to the period commencing on the first day of the first calendar month following the date of the Discriminatory Action and expiring on the day preceding the day on which the Discriminatory Action was remedied.

ARTICLE 14~~Article 13~~ LIABILITY AND INDEMNIFICATION

14.1 ~~13.1~~ Exclusion of Consequential Damages

Notwithstanding anything contained herein to the contrary, neither Party will be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits, loss of use of any property or claims of customers or contractors of the Parties for any such damages.

14.2 ~~13.2~~ Liquidated Damages

Nothing in this Article shall reduce a Party's claim for liquidated damages pursuant to Sections 2.2(c), 3.1(b), 3.2(b), or 6.2(b)(iii). The Supplier acknowledges and agrees with the Buyer that the actual damages incurred by the Buyer and Electricity consumers as a result of a failure by the Supplier to meet its obligations under this Agreement are impossible to definitively quantify and the Supplier further agrees that the payment of the liquidated damages set forth in this Agreement constitutes a fair and reasonable means of compensating the Buyer for damages likely to be incurred as a result of such delays and does not constitute a penalty.

14.3 ~~13.3~~ **Buyer Indemnification**

In addition to the indemnity provided by the Supplier in Section 2.1(c), the Supplier shall indemnify, defend and hold the Buyer, the System Operator (to the extent that it is no longer the Buyer), the Government of Ontario, the members of the Government of Ontario's Executive Council, and their respective Affiliates, and each of the foregoing Persons' respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers' fees and reasonable disbursements in connection therewith) (each, an "**Indemnifiable Loss**"), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of:

- (a) any occurrence or event relating to the Facility, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees or the failure of the Indemnitees to comply with Laws and Regulations; or
- (b) any breach by the Supplier of any representations, warranties, and covenants contained in this Agreement, except to the extent that any injury or damage is attributable to the negligence or wilful misconduct of the Indemnitees.

For greater certainty, in the event of contributory negligence or other fault of the Indemnitees, then such Indemnitees shall not be indemnified hereunder in the proportion that the Indemnitees' negligence or other fault contributed to any Indemnifiable Loss.

14.4 ~~13.4~~ **Defence of Claims**

- (a) Promptly after receipt by the Indemnitees of any Claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section ~~13.4.3~~ 14.3 may apply, the Buyer shall notify the Supplier in writing of such fact. The Supplier shall assume the defence thereof with counsel designated by the Supplier and satisfactory to the affected Indemnitees, acting reasonably; provided, however, that if the defendants in any such action include both the Indemnitees and the Supplier and the Indemnitees shall have reasonably concluded that there may be legal defences available to them which are different from or additional to, or inconsistent with, those available to the Supplier, the Indemnitees shall have the right to select separate counsel satisfactory to the Supplier acting reasonably (at no additional cost to the Indemnitees) to participate in the defence of such action on behalf of the Indemnitees. The Supplier shall promptly confirm that it is assuming the defence of the Indemnitees by providing written notice to the Indemnitees. Such notice shall be provided no later than five (5) days prior to the deadline for responding to any Claim relating to any Indemnifiable Loss.

- (b) Should any of the Indemnitees be entitled to indemnification under Section ~~13~~14.3 as a result of a Claim by a third party, and the Supplier fails to assume the defence of such Claim (which failure shall be assumed if the Supplier fails to provide the notice prescribed by Section ~~13~~14.4(a)), the Indemnitees shall, at the expense of the Supplier, contest (or, with the prior written consent of the Supplier, settle) such Claim, provided that no such contest need be made and settlement or full payment of any such Claim may be made without consent of the Supplier (with the Supplier remaining obligated to indemnify the Indemnitees under Section ~~13~~14.3), if, in the written opinion of an independent third party counsel chosen by the Company Representatives, such Claim is meritorious. If the Supplier is obligated to indemnify any Indemnitees under Section ~~13~~14.3, the amount owing to the Indemnitees will be the amount of such Indemnitees' actual out-of-pocket loss net of any insurance proceeds received or other recovery.

~~ARTICLE 14~~
ARTICLE 15 ~~Article 14~~
CONTRACT OPERATION AND ADMINISTRATION

15.1 ~~14.1~~ **Company Representative**

The Supplier and the Buyer shall by notice in the form of Exhibit D, each appoint, from time to time, a representative (a “**Company Representative**”), who shall be duly authorized to act on behalf of the Party that has made the appointment, and with whom the other Party may consult at all reasonable times, and whose instructions, requests, and decisions, provided the same are in writing signed by the respective Company Representative, shall be binding on the appointing Party as to all matters pertaining to this Agreement. The Company Representatives shall not have the power or authority to amend this Agreement.

15.2 ~~14.2~~ **Record Retention; Audit Rights and Obligations**

The Supplier and the Buyer shall both keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained as required by Laws and Regulations but for no less than for seven (7) years after the creation of the record or data. The Supplier and the Buyer, on a confidential basis as provided for in Article 8 of this Agreement, shall provide reasonable access to the relevant and appropriate financial and operating records and data kept by it relating to this Agreement reasonably required for the other Party to comply with its obligations to Governmental Authorities or to verify or audit billings or to verify or audit information provided in accordance with this Agreement. A Party may use its own employees for purposes of any such review of records provided that those employees are bound by the confidentiality requirements provided for in Article 8. Alternatively, a Party may at its own expense appoint an auditor to conduct its audit. The Party seeking access to such records in this manner shall pay the fees and expenses associated with use of the third party auditor.

15.3 ~~14.3~~ **Reports to the Buyer**

- (a) The Supplier shall deliver to the Buyer a copy of all reports, plans and notices that the Supplier is required to provide under the IESO Market Rules with respect to

Outages, at the same time or within one (1) Business Day after such reports, plans and notices are delivered by the Supplier under the IESO Market Rules.

- (b) In addition to the documentation provided in Section 145.3(a):
- (i) the Supplier may, no later than ninety (90) days prior to the Term Commencement Date and no later than ninety (90) days prior to the start of any subsequent Contract Year, deliver a notice to the Buyer designating either:
- (A) any one (1) of the calendar months of April, May, October or November in the subsequent Contract Year ~~which will constitute the Annual Planned Maintenance Month, which month may be subject to change where~~(unless otherwise directed or requested or directed by the System Operator in accordance with the IESO Market Rules) in which it will conduct a Planned Outage for purposes annual planned maintenance with a duration of at least ten (10) consecutive Business Days (any such designated calendar month, a “Sole Annual Planned Maintenance Month”);
or
- (B) any two (2) of the calendar months of April, May, October or November in the subsequent Contract Year (unless otherwise directed or requested by the System Operator in accordance with the IESO Market Rules) in which it will conduct a Planned Outage for purposes annual planned maintenance with a duration of at least five (5) consecutive Business Days (any of such two (2) designated calendar months, a “Split Annual Planned Maintenance Month”);
- (ii) the Supplier shall, at the request of the Buyer, provide to the Buyer an annual operating plan for the Facility for the succeeding Contract Year, in the form set out in Exhibit L (the “**Annual Operating Plan**”). The Annual Operating Plan shall include a schedule of Planned Outages for that twelve (12) month period (together with the Supplier’s estimate of the expected duration of each Planned Outage) which shall be consistent with Good Engineering and Operating Practices and, to the extent the Supplier is required to do so by the IESO Market Rules, coordinated with and approved by the System Operator. The Supplier may, on not less than ten (10) Business Days’ prior notice to the Buyer, amend the Annual Operating Plan and its schedule of Planned Outages, provided that where the System Operator directs the Supplier to amend its schedule of Planned Outages on less than ten (10) Business Days’ prior notice, the Supplier shall make the corresponding amendments to its Annual Operating Plan and shall provide the Buyer with notice of such amendment within two (2) Business Days of receipt of any such direction from the System Operator; and

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- (iii) the Supplier shall provide prompt notice to the Buyer of any Outage other than a Planned Outage, or any anticipated Outage other than a Planned Outage, followed thereafter by a subsequent notice, to be delivered as soon as reasonably practicable, which subsequent notice shall include a statement of the cause of such Outage, the proposed corrective action and the Supplier's estimate of the expected duration of such Outage. The Supplier shall use Commercially Reasonable Efforts to promptly end or reduce the length of such Outage.
- (c) All Outages shall take place in accordance with the notices of Outages provided by the Supplier to the Buyer under this Section ~~14.4~~3, provided that where the System Operator directs the Supplier to amend its schedule of Planned Outages on less than ten (10) Business Days' prior notice, the Supplier shall follow such direction and provide notice of any changes to the Buyer within two (2) Business Days of receipt of such direction from the System Operator.

15.4 ~~14.4~~ **Inspection of Facility**

- (a) The Buyer's representatives shall, at all times upon two (2) Business Days' prior notice, at any time after the Contract Date, have access to the Facility and every part thereof during regular business hours and the Supplier shall, and shall cause all personnel operating and managing the Facility, to furnish the Buyer with all reasonable assistance in inspecting the Facility for the purpose of ascertaining compliance with this Agreement; provided that such access and assistance shall be carried out in accordance with and subject to the reasonable safety and security requirements of the Supplier and all personnel operating and managing the Facility, as applicable, and shall not interfere with the operation of the Facility.
- (b) The inspection of the Facility by or on behalf of the Buyer shall not relieve the Supplier of any of its obligations to comply with the terms of this Agreement. No Supplier Event of Default will be waived or deemed to have been waived by any inspection by or on behalf of the Buyer. In no event will any inspection by the Buyer hereunder be a representation that there has been or will be compliance with this Agreement and Laws and Regulations.

15.5 ~~14.5~~ **Inspection Not Waiver**

- (a) Failure by the Buyer to inspect the Facility or any part thereof under Section ~~14.4~~4, or to exercise its audit rights under Section ~~14.5~~2, shall not constitute a waiver of any of the rights of the Buyer hereunder. An inspection or audit not followed by a notice of a Supplier Event of Default shall not constitute or be deemed to constitute a waiver of any Supplier Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Supplier with this Agreement.
- (b) Failure by the Supplier to exercise its audit rights under Section ~~14.5~~2 shall not constitute or be deemed to constitute a waiver of any of the rights of the Supplier

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hereunder. An audit not followed by a notice of a Buyer Event of Default shall not constitute or be deemed to constitute a waiver of any Buyer Event of Default, nor shall it constitute or be deemed to constitute an acknowledgement that there has been or will be compliance by the Buyer with this Agreement.

15.6 ~~14.6~~ Capacity Check Tests for Must-Offer Facility

(a) Right to Request Capacity Check Test.

- (i) The Buyer shall have the option, exercisable on no more than one (1) occasion per Season ~~per Contract Year~~, upon providing written notice to the Supplier (a “Capacity Check Test Notice”), to require the Supplier in respect of any Must-Offer Facility, ~~within five (5) Business Days after written notice has been delivered to the Supplier~~, provided it is not during an Outage, to conduct a test at any time during Qualifying Hours within ~~the Capacity Check Test Window (the “Capacity Check Test”)~~ Window, at the Supplier’s sole cost and expense, that may be witnessed by the Buyer or its Representative, to confirm the ability of the Facility to produce at least one hundred percent (100%) of the Reference Seasonal ICAP, as described below (the “Capacity Check Test”).
- (ii) The ~~Buyer shall at least five (5) Business Days prior to the Capacity Check Test, deliver a written notice to the Supplier informing the Supplier of the test window for the Capacity Check Test, which shall be any five (5) consecutive Business Day period of any calendar month (the “Capacity Check Test Window”)~~ test window for the Capacity Check Test shall be any time during Qualifying Hours in the ten (10) consecutive Business Day period following the delivery of the Capacity Check Test Notice, provided that ambient temperature conditions, as reported at the Environment Canada weather station that is physically nearest to the Facility, do not to exceed +35 degrees Celsius in the Summer or fall below -20 degrees Celsius in the Winter for more than fifty percent (50%) of Qualifying Hours (the “Capacity Check Test Window”). In the event that ambient temperature conditions, as reported at the Environment Canada weather station that is physically nearest to the Facility, exceed +35 degrees Celsius in the Summer or fall below -20 degrees Celsius in the Winter for more than fifty percent (50%) of Qualifying Hours in the ten (10) consecutive Business Days following the Capacity Check Test Notice, the Capacity Check Test Window shall be automatically extended until such time as there have been ten (10) Business Days (in aggregate) since the delivery of the Capacity Check Test Notice where ambient temperature conditions, as reported at the Environment Canada weather station that is physically nearest to the Facility, did not exceed +35 degrees Celsius in the Summer or fall below -20 degrees Celsius in the Winter for more than fifty percent (50%) of Qualifying Hours.

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(iii) The measurements of the Capacity Check Test shall be made using high accuracy calibrated instruments and recording systems or Facility instrumentation, including tariff meters for Electricity acceptable to the Buyer, acting reasonably and in accordance with the Metering Plan. Each Capacity Check Test consists of the Facility generating Electricity for:

- (A) at least forty-eight (48) continuous five (5) minute intervals during Qualifying Hours, if the Duration Capability of the Must-Offer Facility is greater than four (4) hours; and
- (B) at least twelve (12) continuous five (5) minute intervals during Qualifying Hours, if the Duration Capability of the Must-Offer Facility is less than four (4) hours,

during a period designated by the Supplier on prior written notice to the Buyer in advance as a test period, subject to coordination and scheduling under the IESO Market Rules, and shall be evaluated based on a calculation of the generator Electricity output at the Delivery Points net of any Station Service Loads in accordance with the Metering Plan. The Supplier acknowledges and agrees that the Reference Seasonal ICAP, the Electricity output of the Facility and the Station Service Loads, as may be measured by the Capacity Check Test, shall not be adjusted for ambient weather conditions.

(b) **Optional Re-Performance of a Capacity Check Test as a result of Force Majeure.** If a Capacity Check Test is interrupted by an event of Force Majeure, then the Supplier may, at the Supplier's sole cost and expense, re-perform the Capacity Check Test within ten (10) Business Days after the receipt by the Supplier of the Capacity Confirmation relating to such Capacity Check Test from the Buyer. Notwithstanding the foregoing, where a Capacity Check Test is interrupted by an event of Force Majeure, and the effect of such event of Force Majeure is capable of being remedied within twelve (12) hours, the Buyer shall have the right to require the Supplier to re-perform the Capacity Check Test immediately upon the remedying of the effect of such event of Force Majeure.

(c) **Capacity Check Test Report.** The Supplier shall at the Supplier's sole cost and expense and within two (2) Business Days after the closing of the Capacity Check Test Window, after completion of the Capacity Check Test prepare and submit to the Buyer a written Capacity Check Test report that includes the data collected during the test period, computation of test data and the test results (provided in .xls format for both the primary and alternate or secondary meter). The Buyer shall provide to the Supplier within ten (10) Business Days after receipt of the Capacity Check Test report from the Supplier, written confirmation of the Electricity output for ~~each twelve (12) hour~~ or ~~forty-eight (48) continuous five (5) minute intervals~~ four (4) hours, as applicable, during the Capacity Check Test (the "Capacity Confirmation").

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- (d) **Requirements to Pass a Capacity Check Test.** To pass the Capacity Check Test, the Electricity output (in MWh) for the one (1) hour or four (4) hour period, as applicable, of the Capacity Check Test, divided by one (1) hour or four (4) hours, as applicable, must be equal to or greater than one hundred percent (100%) of the Reference Seasonal ICAP, in which case the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity Confirmation in relation to the Capacity Check Test.
- (e) **Further Capacity Check Test.** If the Supplier has not passed the Capacity Check Test, then the Supplier shall, at the Supplier's cost and expense, perform a further Capacity Check Test (the "**Further Capacity Check Test**") within ten (10) Business Days after the receipt by the Supplier of the Capacity Confirmation from the Buyer, on the same terms and conditions as the Capacity Check Test described in Section 145.6(a). For clarity, any Further Capacity Check Test shall not count towards the Buyer's option to require one (1) Capacity Check Test per Season per Contract Year. If the total Electricity output of the Facility for each of the Capacity Check Test and the Further Capacity Check Test, as stated in their respective Capacity Confirmations, divided by the one (1) hour or four (4) hours, as applicable, in each of the respective check tests (each an "**Average Test Capacity**"), are both less than ~~ninety~~eighty-five percent (~~90~~85%) of the Reference Seasonal ICAP, then this shall be considered a Supplier Event of Default. For purposes of calculating the Average Test Capacity in this Section 145.6, the Electricity output from one (1) hour or four (4) hours, as applicable, shall not exceed a maximum amount equal to the Reference Seasonal ICAP multiplied by one (1) hour or four (4) hours, as applicable.
- (f) **Result of Further Capacity Check Test.** If the Further Capacity Check Test shows that the Average Test Capacity was less than one hundred percent (100%) of the Reference Seasonal ICAP, then the Capacity Reduction Factor for purposes of Exhibit J shall be reduced as set out below, effective on the date of the Capacity Confirmation in relation to the Further Capacity Check Test. The Capacity Reduction Factor shall be an amount equal to a fraction, the numerator of which is the greater of the Average Test Capacities resulting from the Capacity Check Test and the Further Capacity Check Test, and the denominator of which is one hundred percent (100%) of the Reference Seasonal ICAP which relates to such greater Average Test Capacity.
- (g) **Final Capacity Check Test.** If Section 145.6(f) is applicable, then the Supplier shall perform a further Capacity Check Test (the "**Final Capacity Check Test**") at the Supplier's cost and expense within ten (10) Business Days after written notice has been delivered by the Supplier to the Buyer, no earlier than one month and no later than six (6) months after the date of the Capacity Confirmation with respect to the Further Capacity Check Test, failing which this shall be considered to be a Supplier Event of Default. The Final Capacity Check Test shall take place on the same terms and conditions as the Capacity Check Test described in Section 145.6(a) and including the delivery of the Capacity Confirmation in relation to the

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Final Capacity Check Test. For clarity, any Final Capacity Check Test shall not count towards the Buyer’s option to require one (1) Capacity Check Test per Season per Contract Year. If the total Electricity output of the Facility for the one (1) continuous hour or four (4) continuous hours, as applicable, of the Final Capacity Check Test, as stated in the Capacity Confirmation with respect to the Final Capacity Check Test, divided by the one (1) hour or four (4) hours, as applicable, in such check test (which result shall also be an “Average Test Capacity” as calculated pursuant to sub-section (e)):

- (i) is less than ~~ninetyeighty-five~~ percent (~~9085~~%) of the Reference Seasonal ICAP, then this shall be considered a Supplier Event of Default;
- (ii) is equal or greater to ~~ninetyeighty-five~~ percent (~~9085~~%) and less than one hundred percent (100%) of the Reference Seasonal ICAP, then the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to a fraction, the numerator of which is (i) the Average Test Capacity in relation to the Final Capacity Check Test, and the denominator of which is (ii) one hundred percent (100%) of the Reference Seasonal ICAP which relates to the Final Capacity Check Test; or
- (iii) is equal to one hundred percent (100%) of the Contract Capacity, then the Capacity Reduction Factor shall, for the purposes of Exhibit J, be an amount equal to 1.0, effective from the date of the Capacity Confirmation in relation to the Final Capacity Check Test.

15.7 ~~14.7~~ Notices

- (a) All notices pertaining to this Agreement not explicitly permitted to be in a form other than writing shall be in writing and shall be addressed to the other Party as follows:

If to the Supplier:	[●]			
	Attention:	[●]		
	E-mail:		[●]	
If to the Buyer:	IESO			
	120	Adelaide	Street	West
	Suite			1600
	Toronto,			Ontario
	M5H 1T1			
	Attention:	[●]		
	E-mail:		[●]	

Either Party may, by written notice to the other, change its respective Company Representative or the address to which notices are to be sent.

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- (b) Notices shall be delivered or transmitted as set out below, and shall be considered to have been received by the other Party:
- (i) on the date of delivery if delivered by hand or by courier prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, it being agreed that the onus of establishing delivery shall fall on the Party delivering the notice;
 - (ii) in those circumstances where electronic transmission (other than transmission by facsimile) is expressly permitted under this Agreement, on the date of delivery if delivered prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the next following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter;
 - (iii) on the third (3rd) Business Day following the date of transmission by facsimile, if transmitted prior to 5:00 p.m. (local time of the recipient) on a Business Day and otherwise on the fourth (4th) following Business Day, provided that a copy of such notice is also delivered by regular post within a reasonable time thereafter; and
 - (iv) on the fifth (5th) Business Day following the date of mailing by registered post.
- (c) Notwithstanding Section ~~14~~5.7(b):
- (i) any notices of an Event of Default and termination of this Agreement shall only be given by hand or courier delivery; and
 - (ii) if regular post service, facsimile, or other form of electronic communication is interrupted by strike, slowdown, a Force Majeure event or other cause, a notice, direction or other instrument sent by the impaired means of communication will not be deemed to be received until actually received, and the Party sending the notice shall utilize any other such service which has not been so interrupted to deliver such notice.

~~ARTICLE 15~~
ARTICLE 16
MISCELLANEOUS

16.1 ~~15.1~~ **Informal Dispute Resolution**

If either Party considers that a dispute has arisen under or in connection with this Agreement that the Parties cannot resolve, then such Party may deliver a notice to the other Party describing the nature and the particulars of such dispute. Within ten (10) Business Days following delivery of such notice to the other Party, a senior executive (Senior Vice-President or higher) from each Party shall meet, either in person or by telephone (the “**Senior Conference**”), to attempt to resolve the dispute. Each senior executive shall be prepared to propose a solution to the dispute.

If, following the Senior Conference, the dispute is not resolved, the dispute may be settled by arbitration pursuant to Section 156.2, if agreed to by both Parties.

16.2 ~~15.2~~ Arbitration

Except as otherwise specifically provided for in this Agreement, any matter in issue between the Parties as to their rights under this Agreement may be decided by arbitration provided, however, that the Parties have first completed a Senior Conference pursuant to Section 156.1. Any dispute to be decided by arbitration will be decided by a single arbitrator appointed by the Parties or, if such Parties fail to appoint an arbitrator within fifteen (15) days following the agreement to refer the dispute to arbitration, upon the application of either of the Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) sitting in the Judicial District of Toronto Region. The arbitrator shall not have any current or past business or financial relationships with any Party (except prior arbitration). The arbitrator shall provide each of the Parties an opportunity to be heard and shall conduct the arbitration hearing in accordance with the provisions of the *Arbitration Act, 1991* (Ontario). Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) days after the end of the arbitration hearing and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change this Agreement in any manner. The decision of the arbitrator shall be conclusive, final and binding upon the Parties. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the provisions of the *Arbitration Act, 1991* (Ontario) or solely on a question of law as provided for in the *Arbitration Act, 1991* (Ontario). The *Arbitration Act, 1991* (Ontario) shall govern the procedures to apply in the enforcement of any award made. If it is necessary to enforce such award, all costs of enforcement shall be payable and paid by the Party against whom such award is enforced. Unless otherwise provided in the arbitral award to the contrary, each Party shall bear (and be solely responsible for) its own costs incurred during the arbitration process, and each Party shall bear (and be solely responsible for) its equal share of the costs of the arbitrator. Each Party shall be otherwise responsible for its own costs incurred during the arbitration process.

16.3 ~~15.3~~ Business Relationship

Each Party shall be solely liable for the payment of all wages, taxes, and other costs related to the employment by such Party of Persons who perform this Agreement, including all federal, provincial, and local income, social insurance, health, payroll and employment taxes and statutorily-mandated workers' compensation coverage. None of the Persons employed by either Party shall be considered employees of the other Party for any purpose. Nothing in this Agreement shall create or be deemed to create a relationship of partners, joint venturers, fiduciary, principal and agent or any other relationship between the Parties.

16.4 ~~15.4~~ Binding Agreement

Except as otherwise set out in this Agreement, this Agreement shall not confer upon any other Person, except the Parties and their respective successors and permitted assigns, any rights, interests, obligations or remedies under this Agreement. This Agreement and all of the

provisions of this Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

16.5 ~~15.5~~ **Assignment**

- (a) Except as set out below and as provided in Article 12, neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by either Party, including by operation of Laws and Regulations, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) The Supplier may, subject to compliance with Laws and Regulations and provided that there is not a Supplier Event of Default that has not been remedied, assign this Agreement without the consent of the Buyer to any Person acquiring the Facility; provided, however, that no such assignment by the Supplier or any of its successors or permitted assigns hereunder shall be valid or effective unless and until such purchaser of the Facility agrees with the Buyer in writing to assume all of the Supplier's obligations and be bound by the terms of this Agreement, and the arrangements and obligations of the Supplier set forth in Article 6 have been met in accordance with the terms of Article 6. If a valid assignment of this Agreement is made by the Supplier in accordance with this Section ~~15.6.5~~, the Buyer acknowledges and agrees that, upon such assignment and assumption and notice thereof by the assignor to the Buyer, the assignor shall be relieved of all its duties, obligations and liabilities hereunder.
- (c) If the Supplier assigns this Agreement to a non-resident of Canada (the "Assignee"), as that term is defined in the ITA, and the Buyer incurs any additional Taxes, at any time thereafter, solely as the result of such assignment, then payments under this Agreement by the Buyer shall be reduced by the amount of such additional or withholding Taxes and the Buyer shall remit such additional or withholding Taxes to the applicable taxing authorities. The Buyer shall within sixty (60) days after remitting such Taxes, notify the Assignee in writing, providing reasonable detail of such payment so that the Assignee may claim any applicable rebates, refunds or credits from the applicable taxing authorities. If after the Buyer has paid such amounts, the Buyer receives a refund, rebate or credit on account of such Taxes, then the Buyer shall promptly remit such refund, rebate or credit amount to the Assignee.

16.6 ~~15.6~~ **Survival**

The provisions of Sections 2.1(c), 2.3, 4.2, 4.4, Article 5, Section 6.2(b)(iii), Article 8, Sections 10.2, 10.4, 10.5, and 12.2(g), Article ~~13.4~~, Sections ~~14.5.2~~, ~~15.6.1~~, ~~15.6.2~~, and ~~15.6.5(c)~~ shall survive the expiration of the Term or earlier termination of this Agreement. The expiration of the Term or a termination of this Agreement shall not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of expiration or termination and such rights and obligations shall survive the expiration of the Term or the termination of this Agreement for a period of time equal to the applicable statute of limitations.

16.7 ~~15.7~~ Counterparts

This Agreement may be executed in two or more counterparts, and all such counterparts shall together constitute one and the same Agreement. It shall not be necessary in making proof of the contents of this Agreement to produce or account for more than one such counterpart. Any Party may deliver an executed copy of this Agreement by facsimile or electronic mail but such Party shall, within ten (10) Business Days of such delivery by facsimile or electronic mail, promptly deliver to the other Party an originally executed copy of this Agreement.

16.8 ~~15.8~~ Additional Rights of Set-Off

In addition to the other rights of set-off under this Agreement or otherwise arising in law or equity, either Party may set off any amounts owing to such Party under this Agreement against any amounts owed to the other Party under this Agreement.

16.9 ~~15.9~~ Rights and Remedies Not Limited to Contract

Unless expressly provided in this Agreement, the express rights and remedies of the Buyer or the Supplier set out in this Agreement are in addition to and shall not limit any other rights and remedies available to the Buyer or the Supplier, respectively, at law or in equity.

16.10 ~~15.10~~ Time of Essence

Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

16.11 ~~15.11~~ Further Assurances

Each of the Parties shall, from time to time on written request of the other Party, do all such further acts and execute and deliver or cause to be done, executed or delivered all such further acts, deeds, documents, assurances and things as may be required, acting reasonably, in order to fully perform and to more effectively implement and carry out the terms of this Agreement. The Parties agree to promptly execute and deliver any documentation required by any Governmental Authority in connection with any termination of this Agreement.

[Remainder of Page Intentionally Blank]

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IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Agreement by the undersigned duly authorized representatives as of the date first stated above.

[●]

**INDEPENDENT ELECTRICITY
SYSTEM OPERATOR**

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

By: _____
Name:
Title:

We have authority to bind the corporation.

We have authority to bind the corporation.

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**EXHIBIT A
FACILITY DESCRIPTION**

Name of Facility:	[●]
Municipal Location and Address:	[●]
Connection Point and Circuit Designation:	[●]
Description of Generation Technology:	[●]

Detailed Description of Facility:

1.0 Overview

[●]

1.1 Site Description

[●]

1.2 Project Design and Major Equipment (including preliminary design diagram of the Facility showing all major components), and Nameplate MVA Rating

[●]

1.3 Environmental Features (including a description of features and technologies that mitigate environmental concerns in relation to air quality, noise, water, sewage discharge, etc.):

[●]

1.4 List of Environmental Approvals and Permits, and Status (including a description of the Facility's treatment under the Ontario Ministry of the Environment's "Guide to Environmental Assessment Requirements for Electricity Projects".

[●]

1.5 Fuel Supply (including Gas provider and description of the infrastructure)

[●]

1.6 Electrical Interconnection (including description of work required to connect Facility and attach Single Line Diagram)

[●].

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**EXHIBIT B
CONTRACT CAPACITY, FIXED CAPACITY PAYMENT, AND OTHER STATED
VARIABLES**

Fixed Capacity Payment	\$[●]/MW-Business Day			
Nameplate Capacity	[●]MW			
Reference ICAP	Seasonal	Summer: [●]MW Winter: [●]MW		
Monthly Capacity	Contract	January	[●] MW	Winter
		February	[●] MW	Winter
		March	[●] MW	Winter
		April	[●] MW	Winter
		May	[●] MW	Summer
		June	[●] MW	Summer
		July	[●] MW	Summer
		August	[●] MW	Summer
		September	[●] MW	Summer
		October	[●] MW	Summer
		November	[●] MW	Winter
		December	[●] MW	Winter
Duration Capability	[●] hours			

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**EXHIBIT C
FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT**

DATE OF ISSUE: [●]
 APPLICANT: [●]
 BENEFICIARY: Independent Electricity System Operator and its permitted assigns
 (the “Beneficiary”)
 120 Adelaide Street West, Suite 1600
 Toronto, ON M5H 1T1

AMOUNT: [●]
 EXPIRY DATE: [●]
 EXPIRY PLACE: Counters of the issuing financial institution in Toronto, Ontario
 CREDIT RATING: **[Insert credit rating only if the issuer is not a financial institution listed in either Schedule I or II of the *Bank Act*]**

TYPE: Irrevocable and Unconditional Standby Letter of Credit Number:
 [●] (the “Credit”)

The Credit is issued in connection with the [Contract type] ([abbreviated Contract type]) Contract (the “Contract”) dated [Insert Date of Contract], as amended from time to time, between the Beneficiary and the “Supplier”, as such term is defined under the Contract.

We hereby authorize the Beneficiary to draw on [Issuing Bank Name/Address], in respect of the Credit, for the account of the Applicant, up to an aggregate amount of \$● (● Canadian Dollars) available by the Beneficiary’s draft at sight accompanied by the Beneficiary’s signed certificate stating that:

“The Supplier is in breach of, or default under, the Contract, and therefore the Beneficiary is entitled to draw upon the Credit in the amount of the draft attached hereto.”

Drafts drawn hereunder must bear the clause “Drawn under irrevocable and unconditional Standby Letter of Credit No. [●] issued by [Issuing Bank Name] dated [Issue Date].”

Partial drawings are permitted.

This Letter of Credit will automatically extend for additional, successive terms of one year each (each an “Additional Term”), unless the undersigned provides the Beneficiary with written notice, at least 60 days prior to the expiration date of the then current term, that it does not wish to extend this Letter of Credit for an Additional Term.

We engage with you that all drafts drawn under and in compliance with the terms of the Credit will be duly honoured, if presented at the counters of [Issuing Bank Name/Address] at or before [Expiry Time] (EST) on or before [Expiry Date], as extended.

The Credit is subject to the International Standby Practices ISP 98, International Chamber of Commerce Publication No. 590, and as to matters not addressed by ISP 98, shall be governed by the laws of the Province of Ontario and applicable Canadian federal law, and the parties hereby

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irrevocably agree to attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

This Credit is transferable at the written request of the Beneficiary, without the consent of the Applicant, but subject to consent of the issuing financial institution, acting reasonably. All fees incurred by the issuing financial institution in relation to such transfer shall be at the Applicant's expense, but failure of the Applicant to pay such fees shall not restrict the ability of the Beneficiary to transfer the Credit.

In the event of a transfer of this Credit as provided for above, the above name of the Beneficiary will be amended to another entity by way of an amendment hereto, without the consent of the Applicant, and upon receipt by **[Issuing Bank Name]** of the Beneficiary's dated and signed letter addressed to **[Issuing Bank Name]** and completed as follows:

“We, the undersigned Beneficiary to **[Issuing Bank Name]** Letter of Credit No. [●], hereby waive all our rights under the Letter of Credit and request that the current name and address of the Beneficiary thereunder be amended to read **[insert name and address of new Beneficiary]**. We have enclosed the original Letter of Credit and all amendments (if any) thereto. Please forward the original Letter of Credit and all amendments (if any), including the current amendment to the **[new Beneficiary]**, care of the Applicant.”

[Issuing Bank Name]

By: _____

By: _____

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**EXHIBIT D
FORM OF COMPANY REPRESENTATIVE NOTICE**

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
contract.management@ieso.ca

Pursuant to Section [No.] of the Contract, the Supplier is hereby submitting this completed Form of Company Representative Notice to the Buyer.

Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

ADDING OR REPLACING THE COMPANY REPRESENTATIVE

- The Authorized Signatory below is either a signatory of the Contract, a person authorized to receive Notices, or the Company Representative. No other forms are required.
- The Authorized Signatory below is neither a signatory of the Contract, a person authorized to receive Notices, nor the Company Representative. A Form of Certificate of Incumbency (IESOCM-FORM-18A/Corporation or IESOCM-FORM-18B/General Partner) must be submitted with this form.

Date	
Legal Name of Supplier	
Name of Contract Facility	
Location of Contract Facility Municipality	
Contract Title	(the "Contract")
Contract Date	

ADD	
THE CURRENT COMPANY REPRESENTATIVE WILL BE REMOVED WHEN A NEW COMPANY REPRESENTATIVE IS APPOINTED.	
Name of Company Representative	
Title	
Mailing Address Including Postal Code	
Telephone <input type="checkbox"/> Direct Line	()
Fax <input type="checkbox"/> Direct Line	()
E-Mail Address	

AUTHORIZED SIGNATORY	
By: _____ Date: _____	
[Name]	
[Title]	
[Legal Name of Supplier]	

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EXHIBIT E-A

CALCULATION OF MONTHLY MINIMUM OFFER QUANTITY

The Monthly Minimum Offer Quantity for a Must-Offer Facility for Settlement Month “m” (or MMOQ_m) shall be calculated as follows:

~~MOQ~~MMOQ_m = 0.95 × AMCC_m

where:

AMCC_m is the Adjusted Monthly Contract Capacity for Settlement Month “m”, calculated as follows:

AMCC_m = MCC × FMCRF_m × POCRF_m.

MCC is the Monthly Contract Capacity for Settlement Month “m”.

FMCRF_m is the Force Majeure Capacity Reduction Factor for Settlement Month “m” calculated in accordance with Exhibit J.

POCRF_m is the Planned Outage Capacity Reduction Factor for Settlement Month “m”, which

(i) shall be equal to 1.0 if there are no Planned Outages affecting any Qualifying Hours in the Settlement Month;

(ii) shall be zero (and thus AMCC_m and MMOQ_m will be zero) in a Sole Annual Planned Maintenance Month; and

(iii) in ~~the all other~~ Settlement ~~Month, otherwise it~~ Months shall be the greater of:

(ia) the value calculated as follows: $1 - \frac{POH_m}{NQH_m}$; and

(ib) 0.95 in all months other than ~~the Supplier’s~~ a Sole Annual Planned Maintenance Month or a Split Annual Planned Maintenance Month, and 0.50 during ~~the Supplier’s~~ Split Annual Planned Maintenance Month.

For clarity, in no circumstances will POCRF_m be less than (i) 0.95 in all months other than ~~the Supplier’s~~ a Sole Annual Planned Maintenance Month or a Split Annual Planned Maintenance Month, even if Planned Outages are scheduled for more than five percent (5%) of Qualifying Hours in such Settlement Month, or (ii) 0.50 during ~~the Supplier’s~~ Split Annual Planned Maintenance Month, even if Planned Outages are

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	scheduled for more than fifty percent (50%) of Qualifying Hours in such Settlement Month.
Annual Planned Maintenance Month	Means the single month in a Contract Year that may only be one of the months of April, May, October or November (unless otherwise directed or requested by the System Operator in accordance with the IESO Market Rules) for which the Supplier has provided notice to the Buyer in accordance with Section 14.3 that it will conduct an annual planned maintenance outage with a duration of no longer than ten (10) consecutive Business Days.
POH	is a Planned Outage Hour, which is a Qualifying Hour in Settlement Month “m” for which the Facility is the subject of a Planned Outage.
POH _m	is the total number of Planned Outage Hours in Settlement Month “m”. In determining Planned Outage Hours occurring during a Settlement Month, an hour may be a partial Planned Outage Hour as a result of an inability of the Facility to produce at the full Reference Seasonal ICAP or as a result of a Planned Outage lasting for a part but not all of an hour. An hour in which either such partial Planned Outage occurs (or both of them) will be counted as a fractional Planned Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum output of the Facility in that hour that could have been achieved given the partial Planned Outage or derate (in MWh) by (ii) the Reference Seasonal ICAP multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the POH in the given Settlement Month.
NQH _m	is the total number of Qualifying Hours in Settlement Month “m”.

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EXHIBIT E-B

CALCULATION OF MONTHLY MINIMUM CAPACITY FACTOR

The Monthly Minimum Capacity Factor for an FCF Facility for Settlement Month “m” (or “~~MCF_m~~MMCF_m”) shall be calculated as follows:

~~MCF_m~~MMCF_m = 0.95 × AMCC_m/RSICAP_m

where:

AMCC_m is the Adjusted Monthly Contract Capacity for Settlement Month “m”, calculated as follows:
AMCC_m = MCC × FMCRF_m × POCRF_m.

MCC is the Monthly Contract Capacity for Settlement Month “m”.

FMCRF_m is the Force Majeure Capacity Reduction Factor for Settlement Month “m” calculated in accordance with Exhibit J.

POCRF_m is the Planned Outage Capacity Reduction Factor for Settlement Month “m”, which₂
(i) shall be equal to 1.0 if there are no Planned Outages affecting any Qualifying Hours in the Settlement Month, ~~otherwise it;~~
(ii) shall be zero (and thus AMCC_m and MMCF_m will be zero) in a Sole Annual Planned Maintenance Month; and
(iii) in all other Settlement Months shall be the greater of:
(ia) the value calculated as follows: $1 - \frac{POH_m}{NQH_m}$; and
(ib) 0.95 in all months other than ~~the Supplier’s~~ a Sole Annual Planned Maintenance Month or a Split Annual Planned Maintenance Month, and 0.50 during ~~the Supplier’s~~ Split Annual Planned Maintenance Month.
For clarity, in no circumstances will POCRF_m be less than (i) 0.95 in all months other than ~~the Supplier’s~~ a Sole Annual Planned Maintenance Month or a Split Annual Planned Maintenance Month, even if Planned Outages are scheduled for more than five percent (5%) of Qualifying Hours in such Settlement Month, or (ii) 0.50 during ~~the Supplier’s~~ Split Annual Planned Maintenance Month, even if Planned Outages are scheduled for more than fifty percent (50%) of Qualifying Hours in such Settlement Month.

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POH	is a Planned Outage Hour, which is a Qualifying Hour in Settlement Month “ <i>m</i> ” for which the Facility is the subject of a Planned Outage.
POH _{<i>m</i>}	is the total number of Planned Outage Hours in Settlement Month “ <i>m</i> ”. In determining Planned Outage Hours occurring during a Settlement Month, an hour may be a partial Planned Outage Hour as a result of an inability of the Facility to produce at the full Reference Seasonal ICAP or as a result of a Planned Outage lasting for a part but not all of an hour. An hour in which either such partial Planned Outage occurs (or both of them) will be counted as a fractional Planned Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum output of the Facility in that hour that could have been achieved given the partial Planned Outage or derate (in MWh) by (ii) the Reference Seasonal ICAP multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the POH in the given Settlement Month.
NQH _{<i>m</i>}	is the total number of Qualifying Hours in Settlement Month “ <i>m</i> ”.
Annual—Planned Maintenance Month	Means the single month in a Contract Year that may only be one of the months of April, May, October or November (unless otherwise directed or requested by the System Operator in accordance with the IESO Market Rules) for which the Supplier has provided notice to the Buyer in accordance with Section 14.3 that it will conduct an annual planned maintenance outage with a duration of no longer than ten (10) consecutive Business Days.
RSICAP _{<i>m</i>}	means the Reference Seasonal ICAP of the FCF Facility for Settlement Month “ <i>m</i> ”.

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**EXHIBIT F-A
MUST-OFFER FACILITY AVAILABILITY NON-PERFORMANCE CHARGES**

I. Calculation of the Must-Offer Facility Availability Non-Performance Charges

MOFANC_m = MCP_m × SF_m × NPF	
where:	
MOFANC _m	means the Must-Offer Facility Availability Non-Performance Charge calculated for the Settlement Month “m”.
MCP _m	means the Monthly Capacity Payment (in \$ for the Settlement Month “m”), calculated as follows: MCP _m = FCP _d × SMD _m × MCC _m × FMCRF _m Where, FCP _d , SMD _m , MCC _m and FMCRF _m shall each have the meaning and be calculated in accordance with Exhibit J.
SF _m	means the shortfall of the Monthly Average Offered Quantity below the Monthly Minimum Offer Quantity for the Settlement Month “m” (expressed as a decimal), calculated as follows: SF _m = ((MMOQ _m – MAOQ _m)/MMOQ _m)
MMOQ _m	means the Monthly Minimum Offer Quantity, in MW, for Settlement Month “m” and calculated in accordance with Exhibit E-A
MAOQ _m	means a Monthly Average Offered Quantity, in MW, in the Settlement Month “m”.
NPF	means the Non-Performance Factor set out in Section II of this Exhibit F-A for the applicable Settlement Month.

II. Monthly Non-Performance Factors

The Non-Performance Factors to be used for the purposes of calculation of the Must-Offer Facility Availability Non-Performance Charges, for each calendar month shall be as follows:

January	2.0	July	2.0
February	2.0	August	2.0

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March	1.5	September	2.0
April	1.0	October	1.0
May	1.0	November	1.0
June	1.5	December	1.5

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**EXHIBIT F-B
FCF FACILITY AVAILABILITY NON-PERFORMANCE CHARGES**

I. Calculation of the FCF Facility Availability Non-Performance Charges

$FCFANC_m = MCP_m \times SF_m \times NPF$	
where:	
FCFANC _m	means the FCF Facility Availability Non-Performance Charge calculated for the Settlement Month “m”.
MCP _m	means the Monthly Capacity Payment (in \$ for the Settlement Month “m”), calculated as follows: $MCP_m = FCP_d \times SMD_m \times MCC_m \times FMCRF_m$ Where, FCP _d , SMD _m , MCC _m and FMCRF _m shall be calculated in accordance with Exhibit J.
SF _m	means the shortfall of the Facility Capacity Factor below the Minimum Capacity Factor for the Settlement Month “m” (expressed as a decimal), calculated as follows: $SF_m = ((MMCF_m - FCF_m) / MMCF_m)$
MMCF_m <u>MMCF_m</u>	means the <u>Monthly</u> Minimum Capacity Factor for Settlement Month “m” and calculated in accordance with Exhibit E-B.
FCF _m	means the FCF Facility’s <u>Monthly</u> Facility Capacity Factor, for Settlement Month “m” and calculated in accordance with Exhibit E-B.
NPF	means the Non-Performance Factor set out in Section II of this Exhibit F-B for the applicable Settlement Month.

II. Monthly Non-Performance Factors

The Non-Performance Factors to be used for the purposes of calculation of the FCF Facility Availability Non-Performance Charges, for each calendar month shall be as follows:

<u>Month</u>	<u>Factor</u>	<u>Month</u>	<u>Factor</u>
January	2.0	July	2.0

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February	2.0	August	2.0
March	1.5	September	2.0
April	1.0	October	1.0
May	1.0	November	1.0
June	1.5	December	1.5

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EXHIBIT G

FORM OF ACKNOWLEDGEMENT OF SECURED LENDER’S RIGHTS

THIS AGREEMENT made as of this ____ day of _____, 20 __,

[Note to finalization Finalization: IESO to insert date when executed by the IESO Supplier to leave the date blank]

BETWEEN:

[insert Supplier name],
[insert legal form of the Supplier and jurisdiction of organization]

(the “Supplier”),

- and -

[insert Security Agent name],
in its capacity as [{Secured Lender under the Contracts} or
{insert form of Secured Lender representation, e.g., security trustee, collateral agent and trustee,
etc. for and on behalf of the Secured Lenders (as defined below)}]

(the “Security Agent”),

- and -

**INDEPENDENT ELECTRICITY SYSTEM
OPERATOR**, a statutory corporation without share capital
amalgamated under the laws of the Province of Ontario

(the “IESO”),

RECITALS:

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- A. The Supplier and the IESO, entered into a Medium-Term Capacity (MTC) I Contract dated as of [insert date] (as amended, supplemented, restated or replaced from time to time in accordance with its terms and this agreement, the “Contract”);
- B. *[Note to finalization: describe structure of collateral arrangements; describe any bond issuance and related trust indentures; identify underlying security and debt documents; identify the “Secured Lenders” if they are anyone other than the Security Agent; identify any intercreditor or collateral agency arrangements];*
- C. The Supplier has granted security against, *inter alia*, all of their right, title, entitlement and interest in and to the Contract in favour of the Security Agent pursuant to the security agreements identified in Schedule “A” (collectively, as amended, supplemented, restated or replaced from time to time, the “Security Agreements”), as security for its present and future indebtedness, liabilities and obligations under and in respect of the *[Note to finalization: describe underlying debt instrument(s)]* (the “Secured Debt”); and
- D. The Supplier has agreed and the Security Agent acknowledges that the Secured Debt secured by the Security Agreements is only for the purposes of financing the Supplier’s acquisition, construction, re-development, ownership, operation and maintenance of the Facility and any refinancing of any such debt, and for no other purpose;

THEREFORE, the parties agree as follows:

1. Defined Terms

Unless otherwise provided in this agreement or the context otherwise requires, all capitalized terms which are not defined in this agreement have the respective meanings given to them in the Contract, and “including” shall mean “including without limitation”.

2. Acknowledgement and Confirmation of Rights of Security Agent

The IESO, the Security Agent and the Supplier each acknowledge and confirm that:

- (a) the Supplier has delivered to the IESO copies of the Security Agreements listed on Schedule “A”;
- (b) the Security Agreements listed on Schedule “A” are acknowledged to be Security Agreements to which the provisions of Article 12 of the Contract apply; and
- (c) the Security Agent constitutes the Secured Lender for purposes of the Contract and, without limiting the generality of the foregoing, is entitled to the benefit of the provisions of Article 12 of the Contract in favour of a Secured Lender and is entitled to enforce the same as if the Security Agent were a party to the Contract, until such time as IESO has received notice from the Security Agent that the Security Agreements have been terminated.

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Notwithstanding any other provision of this agreement, no Security Agreement other than the Security Agreements listed on Schedule “A” shall be entitled to the benefit of the provisions of Article 12 of the Contract, unless and until the IESO has received a copy thereof (as provided for in Section 12.1(d) of the Contract) and each of the parties has acknowledged such additional Security Agreement by fully executing an amendment to Schedule “A” to include such additional Security Agreement. It is a condition precedent to the acknowledgement and confirmation provided in this Section 2 that the representations and warranties contained in Sections 3 and 4 hereof are true and accurate.

3. Covenants of the Security Agent

The Security Agent covenants and agrees with the IESO (and in the case of paragraphs ~~3(ea)~~, (d), (f), (h), (i), (j), ~~(k)~~, (l), (m), (n) and (o) below, covenants, agrees, represents and warrants to the IESO) as follows:

- (a) Should the Security Agent enforce the Security Agreements with respect to the Contract, it will comply with the terms, conditions and obligations applicable to a Secured Lender under Section 12.2 of the Contract as they relate to the Security Agent’s security interests in the Contract during such enforcement.
- (b) The Security Agent agrees that it will comply with Section 12.2(f) of the Contract if ever applicable.
- (c) The Security Agent is and will be at Arm’s Length from the Supplier.
- (d) The Security Agreements listed on Schedule “A” constitute all of the security granted by the Supplier in favour of the Security Agent as at the date first written above.
- (e) Except for the Security Agreements and any other security that is delivered by the Security Agent to the IESO in accordance with Section 12.1(d) of the Contract, the Security Agent acknowledges that any other security granted in favour of the Security Agent will not impose any obligations upon the IESO pursuant to the Contract.
- (f) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule “A”.
- (g) If the Supplier is in default under or pursuant to any Security Agreement and the Security Agent intends to exercise any rights afforded to it with respect to the Contract, then the Security Agent will give notice of such default to the IESO at least five (5) Business Days prior to exercising any such rights under the Contract.
- (h) The Security Agent has entered into this agreement and holds the security granted pursuant to the Security Agreements on behalf of all parties having any right, title or interest in the Security Agreements.

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- (i) Only the Security Agent will be entitled to exercise the rights and remedies under the Security Agreements as the Secured Lender except that in accordance with Section 12.2(g) of the Contract, when the Security Agent has appointed an agent, a receiver or a receiver and manager, or has obtained a court-appointed receiver or receiver and manager for the purpose of enforcing the Security Agent's security, that Person may exercise any of the Security Agent's rights under Section 12.2(g) of the Contract.
- (j) The address of the Security Agent to which notices may be sent pursuant to Section 12.1(d) of the Contract is set forth in Section 6 of this agreement.
- (k) The Security Agent will provide the IESO with written notice of any change in the identity or address of the Security Agent, and the Security Agent agrees to promptly notify IESO in writing of any discharge or termination of all or any of the Security Agreements listed on Schedule "A".
- (l) The recitals to this agreement are true and accurate.
- (m) The sale, assignment or other transfer of any rights in shares, partnership interests or similar rights in the capital of the Supplier in respect of which the Security Agent holds a security interest granted pursuant to the Security Agreements shall be subject to Section 12.2(f) of the Contract.
- (n) The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Security Agent acknowledges that any acknowledgement, agreement or confirmation of the IESO hereunder is not and shall not be construed as a consent to any assignment of the Contract or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement as provided for in Article 12 of the Contract.
- (o) The Security Agreements do not and will not secure any indebtedness, liability or obligation of the Supplier that is not related to the Facility or cover any real or personal property of the Supplier not related to the Facility.

4. Covenants of the Supplier

The Supplier covenants, agrees, represents and warrants to the IESO as follows:

- (a) The Security Agreements are subject to the terms and conditions applicable to a Secured Lender's Security Agreement that are contained in Article 12 of the Contract, and comply therewith.
- (b) The Supplier has provided to the IESO true and complete copies of the Security Agreements listed on Schedule "A", and such Security Agreements constitute Secured Lender's Security Agreements and the Security Agent constitutes a Secured Lender for purposes of the Contract.

- (c) All of the security registrations made pursuant to the *Personal Property Security Act* (Ontario) in respect of the Security Agreements are set out in Schedule “A”.
- (d) The recitals to this agreement are true and accurate and the Supplier agrees that all Secured Debt will have been incurred in connection with the ownership, operation and maintenance of the Facility and any refinancing of any such debt.
- (e) The Supplier will provide the IESO with true and complete copies of any new agreements relating to, or amendments to, any Secured Lender’s Security Agreement.
- (g) There is no existing unremedied Supplier Event(s) of Default.
- (h) The Security Agreements have been and shall be entered into, and any security thereunder has been and shall be held and assigned, solely by way of security and not for any other purpose. The Supplier acknowledges that any acknowledgement, agreement or confirmation of the IESO hereunder is not and shall not be construed as a consent to any assignment of the Contract or to any change of Control of the Supplier other than for the *bona fide* enforcement of a security interest duly granted under a Security Agreement.

5. Notice of Default by Security Agent

The parties hereto agree that the IESO shall not be bound or have any obligation to make any inquiry regarding the status of the Supplier’s account with the Security Agent or regarding any breach or default under or pursuant to the Security Agreements other than the written notice (a “**Default Notice**”) to be given to the IESO by the Security Agent pursuant to Section 12.1(e) of the Contract, which may be accepted by the IESO as conclusive evidence of the Supplier’s default thereunder. Following receipt by the IESO of a Default Notice, the IESO may at all times, subject to transfer of such interest or entry into a New Agreement in accordance with Article 12 of the Contract, rely on the instructions (the “**Security Agent’s Instructions**”) of the Security Agent or its nominee or agent or a receiver or receiver and manager appointed in accordance with Section 12.2(d) until the Default Notice is withdrawn by the Security Agent by written notice to the IESO. The IESO shall have no liability to the Supplier for honouring a Default Notice or any Security Agent’s Instructions and the Supplier hereby agrees to indemnify the IESO and hold it harmless in respect of any losses or claims incurred or suffered by the IESO due to or arising out of IESO honouring any Default Notice or complying with any Security Agent’s Instructions, and the sole remedy of the Supplier in any such circumstances shall be against the Security Agent. Prior to receipt by the IESO of a Default Notice, the IESO may at all times rely on the instructions of the Supplier (the “**Supplier’s Instructions**”). The IESO shall have no liability to the Security Agent for complying with any Supplier’s Instructions prior to such receipt.

6. Notice

All notices pertaining to this agreement not explicitly permitted to be in a form other than writing will be in writing and will be given by facsimile or other means of electronic

transmission or by hand or courier delivery. Any notice will be addressed to the parties as follows:

If to the Supplier:

[insert Supplier's mailing address]

Attention: [insert name of contact person or position title]

Facsimile: [insert fax number]

If to the IESO:

Independent Electricity System Operator
120 Adelaide Street West
Suite 1600
Toronto, Ontario
M5H 1T1

Attention: Contract Manager

Facsimile: (416) 967-6071

If to the Security Agent:

[insert Security Agent's mailing address]

Attention: [insert name of contact person or position title]

Facsimile: [insert fax number]

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Notice delivered or transmitted as provided above will be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if a notice is delivered or transmitted after 5:00 p.m. local time or such day is not a Business Day, then such notice will be deemed to have been given and received on the next Business Day. Any party may, by written notice to the other parties, change its respective representative or the address to which notices are to be sent.

7. Successors and Assigns

Subject to complying with Section 12.1(d) and sections 16.5, 16.6 and 16.7 of the Contract, the benefits under this agreement accruing to each of the parties to this agreement will extend to all their respective successors and permitted assigns, only if they agree, according to their interests, to be bound by all the provisions of this agreement (it being the responsibility of

each party to give notice to each other party of such assignment and to require its successors and permitted assigns to expressly acknowledge and agree in favour of each other party to be bound by this agreement). Subject to complying with Section 12.1(d) and Section 16.5 of the Contract, upon the acquisition by any such successor or permitted assign of such an interest, such successor or permitted assign will be joined, as a party benefiting and bound by this agreement, by an appropriate further agreement supplementary to this agreement in form and substance acceptable to the IESO, acting reasonably.

8. No Waiver

The parties hereto confirm that the Contract remains in full force and effect in accordance with its terms and that this agreement shall not be deemed to waive or modify in any respect any rights of the IESO under the Contract. Without limiting the foregoing, this agreement shall not constitute or be deemed to constitute:

- (a) a waiver of any Supplier Event of Default or other default of the Supplier;
- (b) waiver of any prohibition or restriction on, or the IESO's consent to, any assignment of the Contract or change of Control under the Contract; or
- (c) an acknowledgement that there has been or will be compliance by the Supplier with the Contract, except to the extent of the acknowledgement of the rights of the Security Agent as expressly provided herein.

The parties hereto acknowledge and agree that this agreement is being entered into pursuant to, and with respect to, the Contract only and shall not be construed as an amendment or waiver of any other agreement. This agreement, and any notice delivered pursuant to this agreement, shall not be deemed to be notice for any other purpose, including any obligation to provide notice to the IESO pursuant to the IESO Market Rules.

9. Execution and Delivery

This agreement may be executed by the parties hereto in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles will together constitute one and the same agreement.

10. Governing Law

This agreement will be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.

[EXECUTION PAGE IMMEDIATELY FOLLOWS]

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IN WITNESS OF WHICH, the parties have duly executed this agreement as of the date first written above.

[insert Supplier name]

[insert Security Agent name]

By: _____

Name: [insert name]
Title: [insert position title]

By: _____

Name: [insert name]
Title: [insert position title]

I/We have authority to bind the corporation.

By: _____

Name: [insert name]
Title: [insert position title]

By: _____

Name: [insert name]
Title: [insert position title]

I/We have authority to bind the corporation.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

By: _____

Name:
Title:

I/We have authority to bind the corporation.



SCHEDULE “A”

LIST OF SECURITY AGREEMENTS AND REGISTRATION DETAILS

The following Security Agreements were granted in favour of the Security Agent (each of which was dated _____, 20__):

[insert description of Security Agreements]

....

....

....

The following registrations were made in favour of the Security Agent under the *Personal Property Security Act* (Ontario):

(a) [insert description of PPSA registrations, if applicable]

(b) ...

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**EXHIBIT H
FORM OF FORCE MAJEURE NOTICE**

SUBMIT BY E-MAIL (PDF WITH SIGNATURE) TO
contract.management@ieso.ca

Pursuant to Section [No.] of the Contract, the Supplier is hereby submitting this completed Force Majeure Notice to the Buyer.
Capitalized terms not defined herein have the meanings ascribed thereto in the Contract.

- This is a new Force Majeure event, start date and time: _____
- This is an update to existing Force Majeure No.: _____
- This is a termination notice, termination date and time: _____

Date	
Force Majeure No.	
Title of Force Majeure	
Legal Name of Supplier	
Name of Contract Facility	
Contract Title	(the "Contract")
Contract Date	
Type of Force Majeure	<input type="checkbox"/> ACTS OF GOD / EXTREME WEATHER <input type="checkbox"/> OTHER (SPECIFY): <input type="checkbox"/> LABOUR DISPUTES
1. Description of events leading to Force Majeure (Provide reasonably full particulars of the cause and timing events relating to the invoked Force Majeure. Please also provide documentary evidence of the same, including, without limitation, the following: newspaper articles, correspondence, emails, notes, reports, memoranda and any other documentation relevant to establishing the description.)	
2. Effect of Force Majeure (Provide reasonably full particulars of the effect of the Force Majeure on the supplier's ability to fulfill its obligations under the Contract. Please also provide documentary evidence of the same, including, without limitation, the following: reports, policy documents, correspondence, notes, memoranda and any other documentation relevant to establishing the effect.)	

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3. Cost of Alternatives available to remedy or remove the Force Majeure (Provide reasonably full particulars of alternatives available to the Supplier to remedy or remove the Force Majeure, together with an estimation of related costs with respect to each alternative. Please also provide documentary evidence of the same, including, without limitation, the following: written cost estimates, legal or professional opinions and reports, municipal or other government policy documentation and any other documentation relevant to establishing the cost.)

4. Commercially Reasonable Efforts (Reasonably full particulars of efforts, if any, undertaken or contemplated by the Supplier to remedy or remove Force Majeure. Please also provide documentary evidence of the commercially reasonable efforts listed, including, without limitation, the following as applicable: meeting requests with municipal officials, notes from meetings or telephone calls, minutes of meetings, letter or email correspondence with third parties, copies of reports, policies, proposals, newspaper articles and any other documentation relevant to establishing the commercially reasonable efforts.)

AUTHORIZED SIGNATORY

The Authorized Signatory must be either a signatory of the Contract, a person authorized to receive Notices, or the Company Representative.

If not, a Form of Certificate of Incumbency (IESOCM-FORM-18A/Corporation or IESOCM-FORM-18B/General Partner) must be submitted with this form.

By: _____ Date: _____
[Name]
[Title]
[Legal Name of Supplier]

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**EXHIBIT I
FORM OF CONFIDENTIALITY UNDERTAKING**

SUBMIT BY EMAIL TO
contract.management@ieso.ca

Pursuant to Section 8.1(c) of the ~~Medium-Term Capacity~~ MTC I Contract, the Supplier is hereby submitting this Confidentiality Undertaking to the Buyer.

Date	
Legal Name of Supplier	
Legal Name of Undersigned	
Contract Facility	
Contract Title	
Contract Date	
Amended and Restated Date (if applicable)	

WHEREAS the Supplier is a party to the MTC I Contract;

AND WHEREAS the Supplier wishes to disclose Confidential Information to the Undersigned and such disclosure is prohibited without the written consent of the Buyer;

AND WHEREAS the Undersigned is a prospective transaction party for the purposes of purchasing the ~~Contract~~ Facility (the “**Purpose**”);

AND WHEREAS the Buyer is prepared to provide written consent to the Supplier in respect of the disclosure of Confidential Information to the Undersigned for the Purpose;

NOW THEREFORE:

1. The Supplier acknowledges and agrees that:
 - a. the Undersigned has been informed of the Supplier’s confidentiality obligations under the MTC I Contract;
 - b. prior to disclosing Confidential Information to the Undersigned, it will provide a copy of this executed Confidentiality Undertaking to the Buyer;

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- c. the amendment to the MTC I Contract dated [●] is Confidential Information which may not in any circumstance be disclosed by the Supplier to the Undersigned, except in a redacted format, which redacted format requires the prior written consent of the Buyer;

2. The Undersigned acknowledges and agrees that:

- a. it is a prospective transaction party for the purposes of purchasing the ~~Contract~~ Facility;
- b. it has been informed of the Supplier's confidentiality obligations under the MTC I Contract;
- c. it will hold any and all Confidential Information confidential on the terms set out herein and in accordance with Article 8 of the MTC I Contract as applicable to the Supplier, mutatis mutandis; and
- d. it will use the Confidential Information only for the Purpose.

For the purposes of this Confidentiality Undertaking the following terms shall have the meaning ascribed thereto:

“Confidential Information” means all information which is furnished or disclosed by the Buyer and its Representatives to the Supplier and its Representatives in connection with the MTC I Contract, including all new information derived at any time from such confidential information, but excluding: (i) publicly-available information, unless made public by the Supplier and its Representatives in a manner not permitted by the MTC I Contract or this Confidentiality Undertaking; (ii) information already known to the Supplier prior to being furnished by the Buyer; (iii) information disclosed to the Supplier from a source other than the Buyer or its Representatives, if such source is not subject to any agreement with the Buyer prohibiting such disclosure to the Supplier; and (iv) information that is independently developed by the Supplier;

“Representatives” means a Party's directors, officers, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents and those of its Affiliates and the agents and advisors of such Persons, and in respect of the Buyer, includes the Government of Ontario, and its respective directors, officers, employees, auditors, consultants, advisors (including economic and legal advisors), contractors and agents.

All capitalized terms not defined herein shall have the respective meanings ascribed thereto in the MTC I Contract.

Signed this ____ day of _____, 20__.

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SUPPLIER

Per: _____

Name:

Title:

I have authority to bind the Supplier

UNDERSIGNED

Per: _____

Name:

Title:

I have authority to bind the Undersigned



**EXHIBIT J
CALCULATION OF MONTHLY PAYMENT**

This Exhibit J sets out the calculation of the Monthly Payment. Except as expressly set forth below, all references to Sections are to Sections of the Agreement.

The Monthly Payment is calculated as follows:

$MP_m = [FCP_d FCP_{dy} \times SMD_m \times MCC_m \times CRF_m \times FMCRF_m] - ANPC_m$	
where:	
MP_m	is the Monthly Payment (in \$ for the Settlement Month “m”)
FCP_{dy}	is the daily Fixed Capacity Payment (in \$ for each Business Day “d”) in the Settlement Month “m”; for Contract Year “y” . <u>For the first Contract Year, the Fixed Capacity Payment shall be equal to the amount set out in Exhibit B (the “FCP_{dB}”). For the second and each succeeding Contract Year, twenty percent (20%) of the Fixed Capacity Payment shall be adjusted on the first day of such Contract Year to the percentage increase or decrease (if any) between the CPI effective as of the first day of such Contract Year compared with the CPI effective as of the first day of the first Contract Year, such that FCP_{dy} shall be calculated as follows:</u> $FCP_{dy} = (FCP_{dB} \times 0.2 \times IF_y) + (FCP_{dB} \times 0.8)$
IF_y	is the Index Factor for Contract Year “y” and shall be calculated as follows: $IF_y = CPI_y / CPI_B$
CPI_y	is the CPI applicable to the calendar month immediately prior to the first day of Contract Year “y”.
CPI_B	is the CPI applicable to the calendar month immediately prior to the Term Commencement Date.
SMD_m	is the number of Business Days in the Settlement Month “m”, provided that if the Settlement Month is the first or last Settlement Month of the Term, the SMD _m will be only the number of Business Days of the Term in such Settlement Month.
MCC_m	is the Monthly Contract Capacity (in MW) for the Settlement Month “m”.

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CRF _m	is the Capacity Reduction Factor for Settlement Month “m” as defined in Section 145.6, and expressed as a fraction. The Capacity Reduction Factor shall be 1.0 unless and to the extent the circumstances set out in Section 145.6(f) and Section 145.6(g) apply. If the Capacity Reduction Factor changes during the Settlement Month, then CRF will be calculated as a weighted average based on the number of days of the Settlement Month during which the different values of CRF apply.
FMCRF _m	is the Force Majeure Capacity Reduction Factor for Settlement Month “m” which shall be equal to 1.0 if there are no Outages affecting any Qualifying Hours in the Settlement Month resulting from an event of Force Majeure, otherwise it shall be calculated as follows: $FMCRF_m = 1 - \frac{FMOH_m}{NQH_m}$
FMOH	is a Force Majeure Outage Hour, which is a Qualifying Hour in Settlement Month “m” for which the Facility is the subject of an event of Force Majeure.
FMOH _m	is the total number of Force Majeure Outage Hours in Settlement Month “m”. In determining Force Majeure Outage Hours occurring during a Settlement Month, an hour may be a partial Force Majeure Outage Hour as a result of an inability of the Facility to produce at the full Reference Seasonal ICAP or as a result of an event of Force Majeure lasting for a part but not all of an hour. An hour in which either such partial Force Majeure occurs (or both of them) will be counted as a fractional Force Majeure Outage Hour by subtracting from one the quotient obtained by dividing: (i) the maximum output of the Facility in that hour that could have been achieved given the partial Force Majeure or derate (in MWh) by (ii) the Reference Seasonal ICAP multiplied by one (1) hour (in MWh). This fraction will be the contribution of that hour to the FMOH in the given Settlement Month.
ANPC _m	is Availability Non-Performance Charge for Settlement Month “m”, which is either the Must-Offer Availability Non-Performance Charge (MOANC) for Settlement Month “m”, as calculated in accordance with Exhibit F-A or the Facility Capacity Factor Availability Non-Performance Charge (FCFANC) for Settlement Month “m”, as calculated in accordance with Exhibit F-B, as applicable.

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EXHIBIT K
ARBITRATION PROCEDURES APPLICABLE TO ~~SECTION~~SECTIONS 1.6 AND 1.7

The following rules and procedures (the “**Rules**”) shall govern, exclusively, any matter or matters to be arbitrated between the Parties under ~~Section~~Sections 1.6 and 1.7 of this Agreement.

1. **Commencement of Arbitration** – If the Parties and, at the Buyer’s option, all Other Suppliers required by the Buyer to participate, have been unable to reach agreement as contemplated in ~~Section~~Sections 1.6 and 1.7 of this Agreement, as applicable, then the Buyer shall commence arbitration by delivering a written notice (the “**Request**”) to the Supplier and such Other Suppliers required by the Buyer to participate (collectively the “**Suppliers**”). If the Buyer has not already done so, the Buyer shall then deliver to the Suppliers the names of such Other Suppliers. Within twenty (20) days of the delivery of the Request, the Buyer shall deliver to the Suppliers a written notice nominating an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. Within twenty (20) days of the receipt of the Buyer’s notice nominating its arbitrator, the Suppliers shall by written notice to the Buyer nominate an arbitrator who shall be familiar with commercial law matters and has no financial or personal interest in the business affairs of any of the parties. The two (2) arbitrators nominated shall then select a chairperson of the arbitration panel (the “**Arbitration Panel**”) who shall be a former judge of a Superior Court or appellate court in Canada.
2. **Application to Court** - If the Suppliers are unable to agree on the nomination of an arbitrator within twenty (20) days of the receipt of the Buyer’s notice nominating its arbitrator, any of the Suppliers or the Buyer may apply to a judge of the Superior Court of Justice of Ontario to appoint the arbitrator. If the two (2) arbitrators are unable to agree on a chair person within thirty (30) days of the nomination or appointment of the Supplier’s arbitrator, any of the Suppliers or the **Buyer** may apply to a judge of the Superior Court of Justice of Ontario to appoint the chair person.
3. **General** - The **Arbitration Panel**, once appointed, shall proceed immediately to determine the Replacement Price and/or the Replacement Provision, as the case may be, in accordance with the *Ontario Arbitration Act, 1991* and, where applicable, the *Ontario International Commercial Arbitration Act*, it being the intention of the Buyer and the Supplier that there be, to the extent possible, one arbitration proceeding and hearing to determine the Replacement Price and/or the Replacement Provision. Unless otherwise agreed by the Parties, the Arbitration Panel shall determine the conduct of the arbitral proceedings, including the exchange of statements of claim and defence, the need for documentary and oral discovery and whether to hold oral hearings with a presentation of evidence or oral argument so that the award may be made within the time period set out below. Each of the Suppliers shall have a right to participate in the arbitration proceeding.
4. **Consolidation** – The Parties agree that should the Arbitration Panel determine that the Replacement Price and/or the **Replacement Provision** needs to be determined through more than one (1) arbitration proceeding, then the Parties agree that the Arbitration Panel

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shall determine whether the arbitration proceedings shall be consolidated, conducted simultaneously or consecutively or whether any of the arbitration proceedings should be stayed until any of the others are completed.

5. **Award** - The award of the Arbitration Panel, which shall include the Replacement Price and/or Replacement Provision, shall be made within six (6) months after the appointment of the Arbitration Panel, subject to any extended date to be agreed by the Parties or any reasonable delay due to unforeseen circumstances.
6. **Costs** – The Parties shall pay their own costs of participating in the arbitration proceedings.
7. **Fees** - Each of the arbitrators on the Arbitration Panel shall be paid their normal professional fees for **their** time and attendances, which fees together with any hearing room fees, shall be paid by the Buyer.
8. **Computation of Time** - In the computation of time under these Rules or an order or direction given by the Arbitration Panel, except where a contrary intention appears, or the parties otherwise agree:
 - (a) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “at least” are used;
 - (b) statutory holidays shall not be counted;
 - (c) where the time for doing any act or any order or direction given by the Arbitration Panel expires on a day which is not a Business Day, the act may be done on the next day that is a Business Day; and
 - (d) service of a document or notice or any order or direction given by the Arbitration Panel made after 4:00 p.m. (Toronto time), or at any time on a day which is not a Business Day, shall be deemed to have been made on the next Business Day.
9. **Place of Arbitration** - The arbitration, including the rendering of the award, shall take place in Toronto, Ontario, which shall be the seat of the proceedings. The language to be used in the arbitration shall be English.

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EXHIBIT L

FORM OF ANNUAL OPERATING PLAN

SUBMIT BY E-MAIL TO
contract.management@ieso.ca

Pursuant to Section 14.3(b)(i) of the ~~Medium-Term Capacity~~ MTC I Contract, the Supplier is hereby submitting this Annual Operating Plan to the Buyer.

Capitalized terms not defined herein have the meanings ascribed thereto in the MTC I Contract.

Date	
Legal Name of Supplier	
Name of Facility	
Contract Title	(the "Contract")
Contract Date	
Contract Year No.	
From Month / Year to Month / Year	

1. Contract Capacity

Contract Capacity (MW)						
<u>MONTHLY</u> CONTRACT CAPACITY FOR THE CONTRACT YEAR						
As Applicable		As Applicable		As Applicable		
May		Summer		Year		
June						
July						
August						
September						
October						
January		Winter				
February						
March						
April						
November						
December						

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2. Unit Outages

2.1 Planned Outages

Assumptions: [●]

Contract Month	Month / Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Planned Outages (From / To and Number of Days)					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

2.2 Unplanned Outages

Assumptions: [●]

Contract Month	Month / Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Unplanned Outages (%)					
1							
2							

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3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

3. Overall Availability

Assumptions: [●]

Contract Month	Month / Year	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5	Unit 6
		Availability Outages (%)					
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

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